SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM A. D. 1883.

HORACE D. MOORE, *et al.*,
Appellants,
vs.
BEULE E. PAGE, *et al.*,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

APPELLEE'S BRIEF.

H. T. HELM,
Solicitor for Appellees.

EDWARD S. ISHAM & WM. BURRY,
Of Counsel for Appellees.

GEORGE W. SMITH,
Of Counsel for Appellees.

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H. D, Moore, *Appellant,* *vs.* B. V. Page *et al.* *Appllees.*	*No. 1117.* *Appeal from the Circuit Court of the United States for the Northern District of Illinois.*

It is hereby stipulated that the annexed record be taken as an agreed record in the above cause, and that this cause be thereupon submitted upon printed briefs under the twentieth rule of this court.

H. T. HELM,
Attorney for Appellant.

EDWARD S. ISHAM & WM. BURRY,
Attorneys for Appellee, Belle F. Page.

GEORGE W. SMITH,
Attorney for other Appellees.

INDEX.

Bill of Alfred White	1–12
Answer of William Sprague	12
Demurrer and Answer of Union Oil Co.	12–13
Demurrer and Answer of Page, Sprague & Smith	13
Answer of Amos R. Smith	13
Answer of B. V. Page	13–18
Answer of Henry F. Eames	18
Answer of Horace D. Moore	18–19
Cross-bill of Horace D. Moore	19–25
Amendment to Original Bill	25–27
Petition of Int. Mu. Ex. and Invest. Co.	27
Supplemental Bill of Alfred White	27–29
Amendment to Original Bill	29–30
Amendment to Supplemental Bill	30–31
Order Appointing Receiver	31
Amendment to Petition of I. M. E. and I. Co.	31
Appearance of B. F. Page and Henry J. Willing	32
Answer of B. V. Page to Amendments	32–33
Answer of B. F. Page to Amendments	33–42
Answer of Henry J. Willing	42–43
Answer of Henry J. Willing to Amendments	43
Amended Cross-bill of Horace D. Moore	43
Answer of B. F. Page to Amended Cross-bill	43
Order of Examination of Mrs. Page	36

WITNESSES.

William Sprague	45–47
B. V. Page	47–104
Wm. D. Kerfoot	104–105
John S. Manning	105–108
Belle F. Page	108–118
Horace D. Moore	118–119
H. F. Eames	119–120
Wm. Sprague	120–121
Norman Williams	121–222
W. M. Hoyt	122–126
Wm. G. Lewis	126–132
Complainants' Motion	132–133
Receipt of Cashier of First National Bank	133
Order to Examine C. H. Mulliken	133
Transcript of Record of Superior Court	133
Stipulation	134
Opinion of Justice Harlan	135–140
Decree	140–147

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HORACE D. MOORE, *et al.*, *Appellants.*

vs.

BELLE F. PAGE, *et. al.*, *Appellees.*

No. 1,117.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

AGREED RECORD.

PLEADINGS AND EVIDENCE. BILL OF COMPLAINT, FILED MAY 15, 1877.

To the Judges of the Circuit Court of the United States for the Seventh Circuit and Northern District of Illinois.

Alfred White, of Cincinnati, Ohio, a citizen of the State of Ohio, brings this, his bill, against William E. Wheeler, Benjamin V. Page, Amos R. Smith, William Sprague, "Page, Sprague & Smith," a corporation existing under the laws of Illinois; Williard P. Stearns, "Maxwell Oil Company," a corporation existing under the laws of Illinois; William C. Smith, Justus E. Smith, Charles Mears, Henry F. Eames, First National Bank of Chicago, a corporation created by and existing under the laws of the United States, and William Burt, all of Chicago, and citizens of Illinois; H. D. Moore, of Saugatuck, Michigan, and a citizen of Michigan, and Henry Sampson, a citizen of New York.

States recovery by complainant in this court at March term, 1877, of judgment against defendants, William E. Wheeler and Benjamin V. Page, for $3,000 debt, and $1,991.28, damages and costs, to be satisfied, etc., on breach of appeal bond, and costs and charges in said suit, as by record, etc., reference thereto being made will appear. States issue of *fi. fa.*, on or about 1st May, 1877, in usual form, and the contents thereof, and indorsement delivery of same to Marshall of said district; and return by Marshall of same that he had made demand upon both the therein named defendants, who refused to pay the same, or to turn out property to satisfy the same, and that the Marshall's fees were $1.22, as by said writ of fi. fa. directions, and returns will appear. States that said judgment remains in full force and effect, not reversed or satisfied or vacated, and that there remains $1,991.28 damages and ——— costs, with interest thereon from the first day of May, 1877, over and above all claims of defendants, by the way of set-off or otherwise.

Shows on information and belief, that on November 18th, 1874, and before defendants, Benjamin V. Page, William Sprague and Amos R. Smith, were engaged in mercantile business at Chicago, as co-partners, and said firm had large surplus of assets over liabilities, exceeding in amount $100,000; and at date last mentioned, said Benjamin V. Page owned an interest as co-partner in said business and property, which, if said business had been settled up and its debts paid, was worth and would have amounted to the sum of $40,000; and that on or about January 10th, 1877, said defendants, Benjamin V. Page, William Sprague and Amos R. Smith, were, or said Page was, largely indebted to various persons, and was liable on large amounts of paper, then due or approaching maturity; and among others, said Page was indebted to your orator on his said indebtedness

then pending in suit and now in judgment as aforesaid; and that said Benjamin V. Page, William Sprague and Amos R. Smith, with the design, as complainant charges, of putting their interests, and particularly said interest of said Page in said firm, beyond the reach of the creditors of said firm, and the creditors of said Page, and particularly of complainant, and any judgment he might obtain against said Page, organized or pretended to organize, said firm into the defendant, the pretended corporation, "Page, Sprague & Smith," the stock of which pretended corporation was subscribed for, or pretended so to be, by themselves alone, and of which they also constitute the directors and officers; and your orator charges that said Page has pledged or hypothecated his said pretended stock, or some part thereof, to various persons, to complainant unknown; but whether the necessary steps to organize such corporation under the statute in such case provided, were taken, or what steps were taken, complainant has no information and is unable to state; but charges that the sale capital of said pretended corporation was the co-partnership property of said firm, and that said Benjamin V. Page, William Sprague and Amos R. Smith, transferred, assigned or set over, or pretended so to do, to pretended corporation, "Page, Sprague & Smith," defendant herein, all the property, assets and effects, rights, interests, claims and demands belonging to said co-partnership, but whether said transfer and assignment was made upon any and what consideration, if any, the same was made, your orator is unable to state definitely, but charges same was made upon no consideration, or upon no sufficient or valuable consideration; and if any consideration was paid it was nominal only, and did not exceed the sum of one dollar, or some other nominal sum, and that same was made with the intention of hindering the creditors of said Page, or of said Sprague, or of said Smith, or of said firm, and with a view of preventing said credi-

tors of Page from collecting or enforcing their debts, and with the intention of hindering and preventing complainant from collecting his said debt, then due and unpaid, upon a certain bond bearing date long prior to that time, but now in judgment against said defendants, Wheeler & Page, as aforesaid; and that said pretended corporation, and the pretended transfer and assignment of partnership property and effects, is fraudulent and void as to the creditors of said Page, and particularly as against your orator.

Charges that said pretended corporation, "Page, Sprague & Smith," is justly indebted to said Page in a large sum of money, at least the sum of $10,000, or has property, interests or choses in action, legal or equitable, in their possession or control belonging to said Page, or in which he is in some way beneficially interested. Shows upon information and belief that on or about Nov. 18, 1876, said Page was owner in fee of a large amount of real estate in Cook county, among which was a number of lots at Riverside, in said county of Cook, to the number of 25 or more, and was the owner of an equity of redemption or of some other valuable interest or claim in or to a large amount of other real estate in said county, the descriptions of which, and the interest of said Page therein, complainant is unable to state definitely on account of the destruction of records by the fire of 1871; and complainant charges that said Page has still in his own name, or in some way on some secret trust or otherwise for himself, a considerable part of such real estate, which is subject to complainant's judgment and ought to be applied to the satisfaction of the same.

Shows that the indebtedness of said Page to complainant accrued on or about June 30, 1876, and complainant has ever since been a creditor of said Page; therefore, that said Page, at the dates of the deeds hereinafter mentioned,

Further shows that defendants, Wheeler, Page and Sprague were, or one of them was, member of the late firm of Maxwell & Wheeler, and after formation of firm of Maxwell, Wheeler & Co. were members of said last named firm; that the other member of said firm was Joseph. P. Maxwell, who on or about——departed this life; that both of said firms did business in said city of Chicago, and one or both of said firms so did business until the formation of said pretended corporation, the Maxwell Oil Company, as hereinafter stated; that complainant's said indebtedness was as well an indebtedness of said Maxwell and said firm of Maxwell & Wheeler, as of said defendants, Wheeler and Page, that on or about——said Wheeler, Page and Sprague and Maxwell organized, or pretended to organize, a corporation called the "Maxwell Oil Company," the stock of which was all subscribed by themselves, and of which they themselves, or some of them, were the directors and officers, and on or about day last named, said Maxwell, Wheeler, Page & Sprague, or some of them, transferred and turned over to said "Maxwell Oil Company" all the assets, property and effects of said firms of Maxwell & Wheeler, and Maxwell, Wheeler & Co., or one of them, or a large or some part thereof, without any valuable or sufficient consideration therefor, and complainant charges that the said pretended corporation was formed, and said transfer and turning over of such assets, property and effects to said Maxwell Oil Company, were made with intent to disturb, delay, hinder or defraud creditors of said firms, or of said Maxwell or Wheeler, or some of them, and particularly complainant, in collecting his said indebtedness, and with full knowledge on the part of said Maxwell Oil Company, and its stockholders, officers and directors as well as on the part of said Maxwell, Wheeler, Page and Sprague of said fraud and fraudulent intent, and want of consideration, and of the rights of your orator in the premises, and the said transfer to said "Max-

well Oil Company" should be set aside as against complainant, and said "Maxwell Oil Company" be held to account therefor to complainant.

Shows that on or about ——, 1877, defendants, Wheeler & Page, were engaged in mercantile business in the city of Chicago, and in course thereof divers persons became indebted to them to a large amount, and that said defendants at time of filing of bill, have debts due to them for which they hold divers securities and evidences, and have divers goods, wares and merchandies, and other articles of personal property which belong to them, or in which they are in some way beneficially interested, and that they have equitable interests and things in action of some nature or kind, which might or ought to be applied to payment of complainants' judgment. Also charges that said Wheeler & Page are owners of, or in some way or manner beneficially interested in, some real estate in this or some other State; or in some chattels real of some name or kind; or some contract or agreement relating to real estate; or the rents, issues and profits of some real estate; and also that said defendants, Wheeler & Page, are owners of, or one of them is owner of, or in some way beneficially interested in, the stock of the defendant corporations, Page, Sprague & Smith, and the Maxwell Oil Company, or one of said companies or corporations, and in the stock of some other company incorporated or unincorporated, or in the profits of some company or copartnership; and that they have in their possession some money, or that they have, or one of them has money deposited in the said First National Bank of Chicago, or in some other bank, or elsewhere, to their or any of their credit, or that they or one of them have money or securities for the payment of money held by some other person in trust, or otherwise, for their or one of their benefit. And if said defendants, Wheeler & Page, or either of them,

have made any sale, assignment or transfer of their or either of their property or effects, or any part thereof, complainant charges he believes same is merely colorable, and made with a view of protecting the property or effects of said Wheeler & Page, or one of them, so assigned, and placing same beyond the reach of complainant's judgment, and enabling said Wheeler & Page, or one of them, to control or enjoy the same, or the avails thereof, or to hinder or delay complainant in the collection of his debt now in judgment, as aforesail. Bill claims full and complete discovery of all such property, effects and things in action belonging to Wheeler & Page, or either, and of all trusts whereby any property, debts or effects are held for the use or benefit of them, or either of them, and of every sale, assignment or transfer which they, or either of them have made, and all the facts and circumstances relating thereto. Shows that complainant has reason to believe, and does believe, said defendants have property and other equitable interests, things in action or effects of value of more than $100, exclusive of all prior first claims thereon, and which complainant has been unable to reach by execution or said judgment against the said defendants; and that this bill is not exhibited by collusion with said defendants or with any other person, or for the purpose of protecting the property or effects of said Wheeler & Page against the claims of other creditors, but for the purpose of compelling payment of his said judgment.

Prays answer not under oath (oath waived), and that defendants may set forth and discover the nature, situation, amount and value of all the property, interest and effects of said Wheeler & Page, or either of them, with all particulars relating thereto. Bill contains full interrogatories based upon the allegations and charges of the bill, and that defendants or some of them, may be decreed to pay complainant amount due on said judgment and costs in this behalf

sustained, and to apply any money or property belonging to said Wheeler & Page, or either, or held in trust for them, or either of them, or in which they, or either, are in any way or manner beneficially interested, and that they may be enjoined and restrained from selling, assigning, etc., and that a receiver may be appointed with usual powers of receivers in like cases, of all the property, equitable interests, things in action and effects of said Wheeler & Page, and each of them, with general prayer for other relief. Prayer for process against defendants, naming them.

[Signed.] ALFRED WHITE.
By Herbert, Quick & Miller, Compl't's Sol'rs

HERBERT, QUICK & MILLER,
Complainant's Solicitors and of Counsel.

Affidavit that bill is not exhibited or filed by collusion with said defendants or with any other person, etc., but for sole purpose of compelling payment and satisfaction of complainant's judgment.

July 2, 1877. Answer of William Sprague averring that he knows nothing of the judgment against Wheeler & Page; that he has not been indebted to Wheeler & Page or either of them, in any amount, at or since the time of the filing of the bill, and has no property of theirs in his possession or control.

LEAKE & VOCKE,
Solicitors

July 2, 1877. Demurrer and answer of the Union Oil Company, formerly the Maxwell Oil Company, showing the causes of the demurrer; that all the allegations of the bill, charging that it was organized for the purpose of defraud-

ing creditors of Page, are bad, because the validity of this corporation can not be inquired into in this cause.

Answering, says that he knows nothing about the judgment against Wheeler & Page, and that he was not and has not been indebted to Wheeler or Page in any amount at the time of filing the bill or since, and has not in his possession or control any property belonging to them.

July 2, 1877. Demurrer and answer of Page, Sprague & Smith same as that of Union Oil Co.

July 2, 1877. Answer of Amos R. Smith; that he knows nothing about the judgment Wheeler & Page; that he has not owed Wheeler or Page anything at or since the time of the filing of the bill, and has not any of their property in his possession or control.

As to lots 6 to 15 inclusive, of square 92, in Maywood, alleged in the bill to have been conveyed to defendant on April 3, 1877, says that the lots were sold under an execution in favor of Wolcott, Smith & Co., and against Wrigley Bros., and the Sheriff's deed was for convenience made to B. V. Page, but was always the property, equitably, of Wolcott & Smith, and of their successors, Page, Sprague & Smith, and that Page conveyed the lots to them in fulfillment of that trust.

July 2, 1877. Answer of B. V. Page. Admits the judgment against Walker & Page and that he has not paid it; does not know whether Walker has paid it or not; denies that he has any property of any kind to apply in payment of the judgment; denies that he has confederated with any person in any manner to delay his judgment creditors; admits that, in November, 1876, he was a member of Page, Sprague & Smith, and that said firm had a large surplus of

assets above their liabilities; that he was interested in said surplus, and says at that time his interest in the surplus did not exceed $28,500; admits the formation of the corporation of Page, Sprague & Smith; denies that he was asked to put the assets of said firm beyond the reach of creditors; has never heard of any unsatisfied creditor of said firm; that it was a corporation started in good faith, and that defendant received 2,285 shares of the stock of the Company; admits that he has hypothecated said stock, but did not do so with the intention of hindering any creditor, but for the purpose of securing creditors. On Jan., 1877, assigned 100 shares to E. C. Sampson of New York, to secure $10,000; on the 28th of Jan., 1877, assigned to H. J. Willing, 50 shares to secure $3,000; on February 20, 1877, assigned 50 shares to S. Page, to secure $5,000, and assigned the rest of it to various other creditors, to secure money.

That lots 219 and 220 in block 2, 250 and 251 in block 3, 281 and 282 in block 5, Riverside, were conveyed to Smith by mistake.

That defendant was indebted to H. D. Moore for $18,000, and interest, and on June 26, 1875, together with W. S. Sprague, executed a mortgage as additional security to said sum upon said lot, and afterward, about April 3, 1877, with Sprague, quit-claimed the same to Moore, and on the same day the said Smith quit-claimed same to Moore; that the said deed was made because the property was only worth the mortgages, as it had declined in value, and the quit-claim deed was executed in hopes that Moore would release the notes which defendant understood Moore had agreed to do.

Lots 336 and 369, in block 7, second division of Riverside; lot 814, in block 8; 1,077 and 1,078, in block 23; lot 1,167, in block 28; lot 1,276, in block 32, in third

division of Riverside, were conveyed Smith in trust for the Northern National Bank, to which defendant and Sprague were largely indebted without security.

Lots 612, in block 20, addition to second division of Riverside; lot one, block one, fourth division thereof, were conveyed to Smith to secure Oberndorf, Lindheimer & Co., in $400.

Lots 1,005, in block 20; 1,075, in block 23; 1,265 and 1,266, in block 32, of third division of Riverside, were conveyed to Smith in payment of indebtedness of Page & Sprague to Joseph Leister, and were afterward conveyed to Leister by said Smith.

Lot 1,004, in block 20, third division of Riverside, was conveyed to Charles Mears for a debt to Page & Sprague due W. M. Thomas, at the request of Thomas; denies that said deeds were made to defraud creditors, or that said deeds were void or fraudulent, but that they were made in good faith.

That the property conveyed to J. E. Smith, on November 1, 1876, was conveyed to him as cashier of the Northern National Bank, to secure large amounts of indebtedness of Page & Sprague to said bank; that the property was first conveyed to J. E. Smith in November, 1875, but on account of a mistake in the description was re-conveyed in November, 1876; denies said deed was made to hinder or defraud creditors; that the property conveyed to W. P. Stearns was held by Page & Sprague in trust for the Union Oil Company, whose factory is on the property, and Stearns held on the same trust; that there are large mortgages on it.

That defendant is indebted to Henry Sampson of New York, since December, 1872, for $11,000 borrowed money

and interest; with the guaranteed notes of Joseph E. Young, to the amount of $45,000, to Alden Sampson; that in December, 1875, he borrowed of E. C. Sampson $10,000, and that in March, 1877, to secure all this amount, he conveyed to Sampson; he conveyed lots 5 and 6, 29 to 108, both inclusive, as averred in bill of complaint; that at the time, there were foreclosure proceedings against us under which the property was sold.

Lot 14, in H. H. Walker's subdivision, etc., described in the bill, was conveyed to Sampson for the same purpose, but was incumbered for more than it was worth.

That lots 1 to 40, of Walker's Douglas Park addition, were conveyed to Sampson by mistake, because in October, 1875, defendant had conveyed them to Francis M. Robey.

Lot 836, block 10, third division of Riverside, was conveyed to Sampson to secure the same indebtedness; none of the above deeds were executed to hinder or defraud creditors.

Lots 6 to 15, inclusive, of the square 92, in Maywood, were conveyed to A. R. Smith, in April, 1877, because this defendant only held them in trust for Wolcott, Smith & Co., afterward Page, Sprague & Smith; that defendant had no beneficial interest in them, and they were not conveyed to hinder or defraud creditors.

Admits he was once a member of the Maxwell Oil Co., and assisted in the organization of Maxwell, Wheeler & Co; was a stockholder and officer of said company; denies he was a member of Maxwell, Wheeler & Co., and denies that the indebtedness so claimed by complainant was due from Maxwell, Wheeler & Co., or from the Maxwell Oil Co.; the Maxwell Oil Co. is insolvent, its stock is worthless;

when the Maxwell Oil Co. was organized, all of the assets of the Maxwell, Wheeler & Co. were assigned to it, and became a part of the capital stock of the company, assumed the liabilities of the Maxwell, Wheeler & Co., but this was not done with the intention of hindering creditors in any way; when the Maxwell Oil Co. was formed, this defendant and W. Sprague put more than $20,000 into it, of which the creditors all got the benefit; that complainant was not originally a creditor either of Maxwell or Wheeler, but of B. S. Compton, for whom complainant made a tombstone; Compton gave complainant a bill of exchange on which complainant originally brought suit, which bill of exchange was accepted by said Maxwell and said Wheeler for the accommodation of said Compton to raise money to be used in the oil business, and neither said Maxwell, Wheeler, nor this defendant ever got any consideration for said bill, all of which was known to complainant; and complainant is still as well off as if he had never had said bill of exchange, never having parted with any value on account of it; that after this defendant became liable on the bail bond of Maxwell & Wheeler, and before suit was brought in this court, defendant offered to pay complainant all that complainant claimed to be due to him with interest and costs, the same including $300 for solicitor's fees, but complainant would not accept the same without this defendant would in some way secure the balance to be paid to said Compton, which this defendant declined to do, as said Compton was largely indebted to this defendant and said Maxwell & Wheeler; since then this defendant has become unable to pay, but has never attempted to defraud complainant.

About November 18, 1876, defendant owned an interest in Page, Sprague & Smith, worth about $28,500; afterward Page, Sprague & Smith were incorporated and all the assets of the firm transferred to the corporation, and every dollar

to said sheriff; that said writ was returned by the said sheriff on the 12th day of December, A. D. 1877, "No property found; no part satisfied." Sets forth that said judgment still remains in full force and effect, not reversed or satisfied or otherwise vacated, and that the said Benjamin V. Page and William Sprague have not paid the same, but have hitherto wholly neglected and refused so to do.

That there is due on said judgment the sum of $14,000 damages, besides costs, together with interest thereon from the fifth day of September, 1877, over and above all claims of said defendants, by way of set-off or otherwise.

Sets forth that on or about the 1st day of January, 1878, and prior thereto, said Benjamin V. Page and William Sprague, as copartners under the firm name of Page & Sprague, were engaged in the mercantile business in the city of Chicago, Cook County, Illinois, and on information and belief, that in the course of said mercantile business of said Page & Sprague, divers persons became indebted to them in a large amount, and that said defendants have debts due them, and for which they hold divers securities and evidences to a large amount, and have divers goods, wares and merchandise, and other articles of personal property which belong to them, or in which they are beneficially interested; that they have equitable interests and things in action of some nature or kind which might and ought to be applied to the payment of the aforesaid judgment.

That said Benjamin V. Page and William Sprague are the owners of, or in some way beneficially interested in, some real estate in this or some other State, or in some chattels real of some name or kind, or some contract or agreement relating to real estate; or the rents, issues and profits of some real estate; also that said Page & Sprague,

co-partners as aforesaid, are the owners, or in some way beneficially interested in, the stock of some company, incorporated or unincorporated, or in the profits of some company or copartnership; that they have some money or coin in their possession; that they have money deposited in some bank, or elsewhere, to their credit; or that they have money or securities, for the payment of money, held by some person in trust, or otherwise, for their benefit. Sets forth, that if the said Page and Sprague have made any sale, assignment or transfer of any property or effects, that such sale is merely colorable and with the view of protecting the property of said defendants, and placing the same beyond the reach of said judgment, and to hinder and delay the collection of the said judgment; and that so it would appear if full discovery was made by said defendants.

Claims a full and complete discovery of all such property, effects and things in action, belonging to said Benjamin V. Page and William Sprague, as copartners, and each of them separately, and of all trusts whereby any property, debts or effects are held for their use, and of every sale, assignment or transfer made by said defendants, of their property, debts or effects, the person to whom such sale or assignment has been made, the amount and value of the property so sold, and the trusts and conditions upon which such sale or assignment was made, and what is the situation and condition of such property and effects.

On information sets forth that said defendants, last named, have property, etc., of the value of more than $100, exclusive of all prior claims thereon, and which complainant has not been able to reach on execution; that said cross-bill is not exhibited by collusion with said Page and Sprague, or any other person, for the purpose of protecting their property or effects; but for the sole purpose of compelling satisfaction of the aforesaid judgment.

with a view to hinder and delay and defeat his creditors, and among them said complainant, in the collection of his said debt; that no consideration was ever received by said Benjamin V. Page or paid by the grantee in said conveyance for the same, and that said conveyance was in fraud of the rights of said complainant and void as against him. That Helen S. Streator of Chicago, Illinois, claims to have some interest in said last above described property, which said complainant believes was obtained through some pretended conveyance of said Benjamin V. Page.

Sets forth that the judgment of Alfred White, the complainant in the original bill, does not constitute a partnership liability of the firm of Page & Sprague, and as against the rights of this complainant: and that said Alfred White is not entitled to receive satisfaction of his judgment out of the assets of the firm of Page & Sprague, until after the payment of the debt of this complainant and the other creditors of the firm of Page & Sprague. That said complainant is entitled to claim, and claims, that all the assets, rights, credits and effects of said Page & Sprague, which are in the jurisdiction of this court, or may be brought in its jurisdiction shall be, by order and decree of this court, first subjected and applied to the satisfaction of complainant's aforesaid judgment against Page & Sprague, and that said complainant may be decreed to have a priority of lien.

That said Page & Sprague have some rights in property with one Aaron H. Cronkhite, which they are concealing with intent to keep them beyond the reach and knowledge of said complainant.

That while it is true that Page & Sprague have, since their copartnership as aforesaid, formed business relations with divers persons and parties, yet said Page & Sprague still hold, or some person or persons still hold for them, their interest, property, rights, credits and effects belonging to them as copartners in the said original firm of Page &

Sprague, and which should first aud primarly be held and made to apply in payment of the debts of the said firm of Page & Sprague.

Prays that said Benjamin V. Page and William Sprague may be prohibited from making any assignment of this property or confessing any judgment for the purpose of giving preference to any other creditor over said complainant; that a receiver may be appointed.

General prayer for relief.

Prayer for injunction and prayer for summons.

Sworn to by Horace D. Moore.

Amendment to original bill of Alfred White, filed January 3, 1878.

Insert at end of 16th page of original bill the following:

Further shows on information and belief, that, prior to, and at the time of, and since the incurring of the indebtedness, on or about January 20, 1875, to complainant, said Page was the owner, and seized and possessed either in fee as sole owner, or in common with others, of parts of lots 5 and 6, in the Assessor's Subdivision of lot one, in Bronson's addition to Chicago, as follows:

Describes by metes and bounds, lot 21 feet, 6 inches, by 131 ft. 4 inches, 22 ft. 6 inches north of Division, also lot $22\frac{41}{100}$ ft. by $131\frac{1}{3}$ ft. on North State St., 87 ft. north of Division St., also $22\frac{1}{2}$ ft. by $131\frac{1}{3}$ ft. on North State St. on northwest corner of Division St.; that said Page, being so seized without consideration and fraudulently conveyed said lots to Annie F. Page, or to some person unknown, with a view and intent to desturb, delay, hinder, defeat and defraud his creditors, and among others complainant, and that said conveyance is fraudulent and void as against him; charges said lots held by said Annie F. Page, or by her grantee, or by some person unknown, on some secret trust

for benefit of said Benjamin V. Page, and he is in some way beneficially interested therein.

Further shows that prior to and at the time of and since the incurring said indebtedness to complainant on or about January 20, 1875, said Benjamin V. Page was owner and seized in fee and possessed of lot on northwest corner of Dearborn avenue and Maple street, Chicago, extending 90 feet or more on Dearborn avenue, and 120 feet, more or less, to the alley between Clark and Dearborn, and being part of block 18 in Bushnell's addition to Chicago, and known as No. 370, Dearborn avenue, worth $90,000, or thereabouts, and that said Page being so seized and possessed of said premises, after the incurring of said indebtedness to complainant, without consideration, fraudulently conveyed same to William Sprague, or to some party unknown, who thereupon conveyed same without any consideration therefor to Belle F. Page, wife of said Benjamin V., and that said conveyances were made without any considertion therefor, with intent to delay, hinder, defeat and defraud creditors of said Benjamin V., and among others, complainant, and said premises held in trust for said Benjamin V. Page.

Further show, that prior to and at the time of and since the incurring, on or about January 20, 1875, of said indebtedness to complainant, said Benjamin V. Page, either solely or in common with said Sprague, or otherwise, and complainant charges solely, was owner and seized in fee and possessed of the north 12 rods off north end of east ½ south ½, E. ½, W. ½, S. E. ¼, S. W. ¼, Section 9, T. 39 N., R. 13, and that he now has some interest, legal or equitable, in same, and has permitted title to same to fall into hands of Henry H. Gage, or some other party unknown, and that same is held on some agreement or trust for benefit of said Benjamin V. Page, with intent to protect

same from execution, and hinder, delay, defeat and defraud his creditors, and among others, complainant.

Further shows, that William M. Hoyt has or claims some interest in premises above mentioned, or some part thereof, but charges same is subject to rights of complainant, and were acquired with notice thereof.

Makes Annie F. Page, of Hollowell, Maine, citizen of Maine, Henry H. Gage, Aaron H. Cronkhite and William M. Hoyt, citizens of Illinois, defendants.

January 8, 1878. Petition of the International Mutual Exchange and Investment Company of Illinois. Sets up a judgment recovered in its favor on May 9, 1877, in the Superior Court of Cook County, against B. V. Page and W. Sprague for $4,087.07 and costs; that on May 10, 1877, execution was issued against Page and Sprague and returned by the sheriff on June 25, 1877—no property found.

That said judgment is still wholly unsatisfied, and complainant has no security therefor, but is entitled to have the same satisfied out of the property and equitable interests of Page and Sprague.

Prayer. That petitioner may be made either complainant or defendant, and have the same benefit as if he was originally a party, and that he may file a cross-bill.

Supplemental bill of Alfred White, filed January 10, 1878, by leave of court:

States upon information and belief that since filing original bill, and on or about December 1, 1877, said Benjamin V. Page entered into divers negotiations as to certain lots or pieces of land, parts of lot 6 in assessor's subdivision of lot 1, in Bronson's Addition to Chicago, with one Helen S. Streater, and in course thereof he, by virtue of pretended power of attorney of said Anna F. Page, on or about Dec. 8, 1877, made a conveyance of part of said premises, being

south 22½ feet of said lot 6, to Helen S. Streater, and on or about Dec. 8, 1877, in whole or part consideration of said conveyance, said Helen S. Streator and Herbert A. Streator, her husband, or one of them, conveyed to said Benjamin V., or to said Anna F. Page, or to one Sanford A. Baker, or to some other person to complainant unknown, lot 2, in block 8, in Cushman's subdivision of block 4, in Sheffield's Addition to Chicago, and two other lots adjacent or contiguous thereto in said Cushman's subdivision, the more particular description of which and the certainty as to the person to whom same was converyed are to complainant unknown, but from defendant's answers will appear, charges that said Benjamin V. Page, with intent to disturb, etc., his creditors, and particularly complainant, procured said conveyance from said Streator, to be made to said Anna F. Page, or Sanford A. Baker, or some other person unknown, and that the consideration therefor moved and came from said Benjamin V. Page; and same were conveyed by said Streator, and are now held on some trust, for the benefit of said Benjamin V. Page, who is beneficially interested therein, and should be applied to the satisfaction of complainants' judgment, and is of value of $3,000.

Further shows that Benjamin V. Page has property, effects, equitable interests or things in action, of value of $100 and upwards, exclusive of prior claims, which complainant has been unable to reach by execution. Prays answer (not under oath—oath waived), and that interest of said Benjamin V. Page may be discovered in the premises conveyed by said Streator, and that the same may be charged with the payment of complainant's debt, and may be sold and applied to payment of same, and complainant may have against said Baker, or the person by whom said premises are held, the same relief as if the statements herein were in original bill, and for a receiver has prayed in original

bill and said Annie F. Page, or Baker, or the person by whom the same are held, be decreed to convey same to receiver, with general prayer for other relief, etc. Makes said Wheeler, Benjamin V. Page, Sprague, Amos R. Smith, Stearns, Maxwell Oil Co., William C. Smith, Justus E. Smith, Charles Mears, Eames, First National Bank, Burt, Gage, Hoyt, Cronkhite, and Sanford A. Baker, a citizen of Illinois, H. D. Moore, Henry Sampson and Annie F. Page, defendants, and pray subpœna against said Baker.

Amendment to original bill of Alfred White, filed January 10, 1878.

Insert at top of 20th page of original bill herein, the following:

Further shows that prior to, and at the time of, and since the incurring said indebtedness, on or about January 20th, 1875, to complainant, said Benjamin V. Page was owner and seized in fee of the following described premises, to wit: lots 12 and 13, except the south 26 feet of lot 13, in block 45, Canal Trustees' subdivision of north ½ of the west ½ of the southeast ¼ of section 33, township 40 north, range 14 east of the 3d principal meridian; that said Benjumin V. Page conveyed, or procured to be conveyed, the title to said premises to Sarah Maxwell, and said Sarah Maxwell conveyed same to defendant, Belle F. Page, but whole consideration therefor was paid by said Benjamin V. Page, and said premises are now held upon some trust, or otherwise, for said Benjamin V. Page, or said Benjamin V. is beneficially interested therein, and should be made liable to complainant's judgment.

Further shows, upon information and belief, that after said conveyance to said Belle F. Page of lots 17, 18 and 19, in block 18 in Bushnell's Addition, said Belle F. Page conveyed the north ½ of said lot 19, to Henry J. Willing, without any consideration therefor, and said conveyance

was made with intent to disturb, delay, hinder, defeat and defraud the creditors of said Benjamin V. Page, and particularly complainant, and that north ½ of lot 19 is still in fact property of said Benjamin V. Page, and should be subject to payment of complainant's judgment.

Further shows, upon information and belief, that said Belle F. Page conveyed lot 17, and the south 40 feet of lot 18, Bushnell's Addition, to Wm. M. Hoyt, and a large sum of money was received therefor by said Benjamin V. or said Belle F. Page, which money in fact belonged to said Benjamin V. Page; that said money was deposited in First National Bank of Chicago, herein in name of said Belle F. Page, and that a considerable portion of same is still held by said bank, and same should be applied to payment of complainant's said debt.

Makes Belle F. Page and Henry J. Willing, defendants.

Amendment to supplemental bill of Alfred White, filed January 11th, 1878.

Insert before prayer, after words "by execution," the following:

Further shows, upon information and belief, that said lots 12 and 13, except the south 26 feet of lot 13, in block 45, in Canal Trustees' subdivision of the N. ½ W. ½ S-E ¼ of section 33, T. 40 N., R. 14 E., mentioned in original bill as amended, are residences in Chicago, and very valuable, and are, or some part thereof are, now rented, and that said Benjamin V. Page has been, during the pendency of this suit, and now is, collecting, receiving and using the rents thereof.

Further shows, upon information and belief, that said Benjamin V. or Belle F. have received from said Hoyt since commencement of suit, for lot 17 and south 40 feet of lot 18, conveyed to said Hoyt, a large sum of money; that said money was deposited in the First National Bank of

Chicago, in name of Belle F. Page, and said money, or considerable portion, and a large amount of securities, notes, things in action, or other property, purchased with portions of said money, are still held by said bank, and should be applied to the payment of complainant's judgment.

January 14, 1878. Order appointing W. D. Kerfoot receiver of all the property of every kind and nature belonging to B. V. Page, and requiring said B. V. Page to appear before Henry W. Bishop, Esq., Master in Chancery, to execute an assignment of all his property of every kind and nature to the said Kerfoot; and providing further, "That he "appear before such Master from time to time, as said Mas- "ter shall require, and submit to such examination as said "Master shall direct in relation to his property and effects "aforesaid, and the condition thereof."

January 14, 1878. Another order appointing William D. Kerfoot receiver of the property, joint and several, of every kind and nature, belonging to B. V. Page and W. Sprague, and requiring said Page and said Sprague to appear before Henry W. Bishop, Esq., Master in Chancery, and execute an assign nent of all such property to Kerfoot; and providing further, "That they should each of them appear before "said Master from time to time as said Master shall re- "quire, and submit to such examination as said Master "shall direct in relation to their property and effects afore- "said, and the condition thereof."

January 24, 1878. Amendment to the petition of the Internat. Mut. Ex. and Inves. Co. Sets up, that the indebtedness on which the judgment shown in its petition was obtained, accrued on Oct. 18, 1872, and became due 60 days thereafter, and was extended from time to time at the request of Page & Sprague until the comencement of this suit in which judgment was obtained.

Charges that both Page and Sprague were insolvent prior

to the year 1873, and that the conveyance sets forth in the original bill as amended, and the suplements thereto were merely colorable, and made while defendants were insolvent, for the purpose of defeating creditors, and that the extensions granted Page & Sprague by the petitioner, were made on their representations that they were solvent, which representations petitioner alleges were false, and were made for the purpose of enabling Page & Sprague to cover up their property, and to defraud creditors.

February 4, 1878. Appearance of Belle F. Page and Henry J. Willing by Isham & Lincoln.

February 11, 1878. Answer of B. V. Page to the amendments to the bill and to the supplemental bill and the amendments thereto. Defendant denies that at any time since the incurring of the indebtedness on which the bill of complaint is based, defendants had any interest in lots five and six in Assessor's division, lot one, Bronson's Addition to Chicago. He says that before the indebtedness was incurred he conveyed said premises to Annie F. Page, for a good and sufficient consideration, and that he has no interest in the said premises, and that he did not convey the same to hinder or defraud creditors.

Denies that he was seized in fee, or owner, or possessed of, at the northwest corner of Dearborn and Maple streets, in Chicago, at any time since the incuring of the indebtedness mentioned in the bill of complaint; denies that he fraudulently conveyed said premises to Sprague or any other person to convey to Belle F. Page; denies that any such conveyance was made without consideration, or to hinder or defraud his creditors.

Avers that in 1877, he conveyed a certain part of the southwest quarter of section 9, 39, 13, to J. E. Smith, to secure the indebtedness to the Northern National Bank but denies that said premises are held in trust for him, or were

conveyed to hinder or defraud his creditors; denies that he conveyed or procured to be conveyed the title to lot 12, and part of lot 13 in block 45, Canal Trustees', &c., to Sarah Maxwell, and that Sarah Maxwell conveyed the same to Belle F. Page, and that consideration for said premises was paid for this complainant, and denies that he has any interest in said premises, but says he conveyed the said premises to the said Sarah Maxwell, to secure a loan of $5,000 made by her to him; that when said loan became due, the defendant was unable to pay, and that said defendant, Belle F. Page, paid the same with her own money, and took the title and holds it as security for said $5,000; denies that the property conveyed to Henry J. Willing by him, was so conveyed to hinder or defraud creditors, and denies that the north half of lot 18 is still the property of defendant, and should be subject to complainant's judgment.

Defendant is informed and believes that Belle F. Page did convey said premises to W. M. Hoyt; he denies that this defendant received any money therefor, or that any money was due him therefor, but says that the purchase money therefor belonged to and was received by Belle F. Page.

Avers that the property he conveyed to Helen S. Streator was conveyed by him as attorney-in-fact merely for Annie F. Page; denies that he furnished any consideration money for such deed from Streator to Annie F. Page, or has any interest whatever in the premises.

March 2, 1878. Answer of Belle F. Page to the amended and supplemental bill. Admits she is the wife of B. V. Page. Denies that at any time since the incurring of the indebtedness to the complainant, B. V. Page owned or had any interest in the property at the northwest corner of Dearborn and Maple streets in Chicago, being 90 feet on Dearborn street, and 150 feet, more or less, on Maple street, to an alley, and being part of block 8, in Bushnell's Addition

to Chicago, and known as 370 Dearborn Avenue. Admits said premises are worth much more than said alleged indebtedness, but denies they are worth $90,000 or thereabouts, and denies that said B. V. Page, being seized of said premises, and after the incurring of said alleged indebtedness, without consideration, fraudulently conveyed said premises to W. Sprague, or any other person, who immediately conveyed said premises without consideration to this respondent, and denies that said conveyances were made without consideration or to hinder or defraud creditors of B. V. Page, and denies that said premises are held in trust for B. V. Page. Admits that B. V. Page owns lot 12 and part of 13, in block 45, Canal Trustees', &c., of the north half and half of west half of southeast quarter, section 33, 40, 14, and that B. V. Page conveyed to Sarah Maxwell, and that Sarah Maxwell conveyed to this defendant, but denies that the consideration for said conveyance to this defendant was paid by B. V. Page, or that said premises are held in trust for him, or that he is interested in them beneficially.

Admits that after the Dearborn Avenue property was conveyed to her, she deeded part thereof to (J. H.) Willing, but denies the conveyance was made without consideration, or made to hinder or defraud creditors of B. V. Page, and denies any interest of B. V. Page in said premises; admits she conveyed said lot 17, and south 40 feet of lot 18, to W. M. Hoyt, and that she has received money therefor, but denies that in fact, the money belongs to B. V. Page; admits part of said money was deposited in the First National Bank in her name, but denies that any considerable amount remained there.

Answering, says that from 1857 to 1864, B. V. Page was engaged in business as a member of the firm of Lewis Page & Co., wholesale dealers in paint, oils and glass; that since 1864 the condition of said firm was such, as he well understood and now believes, that its indebtedness was very

small, at no time more than $25,000, and being only for current firm expenses and accounts, and that its assets were $350,000, and that the net interest of B. V. Page was not less than $150,000, and the firm had a large unemployed surplus; that the members of said firm from time to time withdrew large sums of money and invested them for their own use; that B. V. Page owned large amounts of property outside of said firm, and owed almost no debts; that being so circumstanced in 1864, and long before any indebtedness in this suit claimed against him, the said B. V. Page bought for her use a piece of land at the southeast corner of State and Erie streets, 75 feet front on Erie and 100 feet deep on State; that the conveyance of said property to this defendant was made by Dunlap and Porter; that thereafter and many years before the indebtedness in said bill mentioned, B. V. Page constructed for defendant's benefit two dwelling houses on the west 50 feet of said premises, the west house being 28 feet wide, and the other one 22; that in June, 1866, this defendant sold the east 25 feet on Erie street of said premises, it being vacant, to James L. Stark, junior, the consideration expressed in the deed being $2,973, but being, in effect, certain premises in the city of Chicago known as lots 32, 33, 34 and 35, in block 29, in the Canal Trustees' subdivision of west half and west half of northeast quarter, Section 17, 39, 14; that the conveyance from said Stark and wife should have been executed direct to this defendant, because the same were purchased with her property, and by her, and she can not tell why it now appears that the deed from Stark and wife was made to B. V. Page; but defendant insists that said lots always remained her property, and not the property of B. V. Page, who held the title only in trust for her; that in June, 1872, this defendant conveyed to F. Lehrkind said lot 35 for $2,000; and in August, 1872, she conveyed lots 32, 33 and 34 to J. E. Snyder, for $5,760; making a total of $7,760 received from

the sale of the east one-third of said premises on Erie street.

This defendant insists that said money derived from said Stark lots were her moneys and not the moneys of B. V. Page, and were always so considered by herself and her husband.

That in August, 1868, she sold to C. A. Gregory, lying next east of the west 28 feet of said property on Erie street, for $14,000, subject to a $5,000 mortgage, which Gregory assumed to pay as part of said consideration, so that this defendant received net from Gregory, for said property, $9,000, and that said money was paid for her to the said B. V. Page, her husband.

That in 1866, Lewis, Page & Co. was dissolved; that at such dissolution, Lewis, one of the partners, paid B. V. Page and W. Sprague, the other partners, about $2,000 cash, two-thirds of which said last mentioned sum went to and belonged to B. V. Page; that in 1870, the said Lewis or Carrie N. Lewis, his wife, owned the northwest corner of Dearborn and Maple streets, being lots 17, 18 and 19, in block 18, Bushnell's Addition; that said premises were subject to a mortgage of $30,000 to the Connecticut Mutual Life Insurance Company; that this defendant arranged to purchase said property from Lewis, subject to the incumberance aforesaid, as a residence and for a homestead, and paid for the same the sum of $55,000, as follows: $30,000 incumbrance as aforesaid, the house and lot that she then owned at the corner of Erie and State streets, for $15,000, and the remaining $10,000 purchase money was paid for her by said B. V. Page, from moneys and property in his hands belonging to this defendant, and arising from the sale of other property on said Erie and State streets, to Gregory and Stark; and defendant insists, that even after said payments there re-

mained in the hands of B. V. Page the sum of $6,760, as proceeds of said Erie street property.

Said purchase from Lewis was made for defendant's own benefit, and wholly paid for by her separate property, and it was intended for a homestead, and it was intended that the conveyance from Lewis and his wife should be taken in the name of this defendant, and until lately she always supposed that it had been so made, and that she was the holder of the legal title, as well as the real owner of the homestead in which she lived; in fact, however, the conveyance from the said Lewis was made to B. V. Page, and on January 5th, 1875, B. V. Page, for the purpose of restoring to this defendant the legal title which should have been hers from the beginning, conveyed the title of the south 90 feet of said Dearborn avenue property to William Sprague, with the intent that the said Sprague should convey it to this defendant, and that said Sprague did forthwith convey the said title to said defendant, and this defendant avers that at the same time said Page should have conveyed her also the remaining 60 feet of said premises; denies that said conveyance was made without consideration, and avers that the title in B. V. Page was only held by him in trust for her, and that since February 5th, 1875, she remained absolute owner of said premises, subject to the incumbrance aforesaid, up to the time she conveyed the same as hereinafter set forth.

In the fall of 1877 this defendant became very desirous of selling the above mentioned Dearborn avenue property, and authorized W. D. Kerfoot to find a purchaser therefor, and in September she arranged for a sale of the south 90 feet of said property to M. W. Hoyt, for $45,000, said Hoyt to take the premises subject to the mortgages, taxes, etc., and to pay the difference between the said incumbrances and the $45,000 to her, and accordingly, on October 3, she

conveyed said premises to said Hoyt, and said Hoyt paid her $15,940, or thereabouts, giving her the check of M. W. Hoyt & Co., payable to her order, which check was received by this defendant, and that said moneys became hers absolutely, as her own individual property, which had been hers since 1864, for the disposition of which she is under no obligation to account to any person, especially the creditors of her husband.

That on October 4th, she endorsed the check and had it certified and delivered to the First National Bank, Chicago; that she took a certificate of deposit for $15,000, and the balance was deposited to her credit in said bank; that the certificate of $15,000 was payable to her order, and that on the 9th October, she had said certificate exchanged by said bank for two other certificates, payable to her order, one for $7,000 and the other for $5,000, and she drew the remaining $3,000 in cash; that at that time her husband was indebted to the estate of J. P. Maxwell, of which he was administrator, in the sum of about $7,400; that said Maxwell had been in business with said B. V. Page, and had had the management of their business up to the time of his death; that she is informed and believes that immeniately on the death of said Maxwell her said husband took charge of said business, but found the same in a far different condition from what he had supposed it to be in; but that said business was deeply involved in debt, which had been misrepresented and concealed from said B. V. Page, and that said Maxwell was, with one William E. Wheeler, indebted to said firm in a sum exceeding $40,000; that the assets of said Maxwell consisted almost entirely of his interest in said business, and of about $10,000 cash in the hands of his administrator; that said B. V. Page, hoping to rescue the said business from its embarrassments, and to save the same, not only for himself, but also for the estate, creditors and family of the said Maxwell, had employed part of the funds

of the said estate in said business when the situation of said business proved to be more hopeless than had at first appeared; that the said moneys so used were involved and sunk therein.

That these matters coming to this defendant's knowledge both she and her husband were very anxious to restore to the Maxwell estate the moneys so used in attempting to rescue said business; that the situation caused her great anxiety and distress of mind, and for that purpose, more than for any other, she caused special effort to be made to sell her said property in order to make good the account of her husband, as such administrator; for such purpose she sold her homestead, as aforesaid, and immediately she applied the sum of $7,400 or thereabouts to make good her husband's account as administrator, and for that purpose gave to him, as such administrator, the said sum of money, deriving the same from one or more of the said certificates taken from the First National Bank, and defendant insists that said moneys were so applied by her and directly by her appropriated and applied to the use of the estate of said Maxwell, and were given by her to the administrator of said estate, and by her directly appropriated to said estate and were not given to her husband individually as a loan to him for any purpose, but passed from her hands by a direct appropriation into the hands of the administrator of said estate; that prior to the sale of the Dearborn avenue property, B. V. Page had borrowed money of Sarah Maxwell to the amount of $5,000, and had used the same in erecting buildings on the property at the corner of Lincoln avenue and North Clark street, and conveyed the title of said property to Mrs. Maxwell to secure said loan; that B. V. Page had borrowed from said parties and repaid to Mrs. Maxwell part of said indebtedness; when this defendant got said money from Hoyt she loaned her husband the sum of $4,500 with which he paid off this Sarah Maxwell

indebtedness, and the moneys he borrowed from other parties to pay Mrs. Maxwell upon this $5,000 indebtedness to her; and thereupon to secure said sums loaned by this defendant to her husband as aforesaid, said Sarah Maxwell conveyed said premises to this defendant, who still holds the title thereof.

That out of the proceeds of the Dearborn avenue property she also loaned $2,000 to the Union Oil Co., of which her husband has the management, and from which he and his family now derive subsistence; and although she is informed that said oil company is now largely in debt, she believes it will eventually repay her. The remainder of the money she got from Hoyt, except what she has herself spent, she now has, but the same is not in any way subject to the debts of her husband.

Denies that the conveyance to Willing was without consideration, or in fraud of the rights of any creditors, but said conveyance to Willing was by way of security for money borrowed.

This defendant avers, that even if said Dearborn avenue property had not been purchased by her, and not paid for by her and with her money, and even if B. V. Page had, in February, 1875, given to her, and she had then acquired for the first time, the equity of redemption of said premises, even then the proceeds of the Erie street property, heretofore mentioned, in the hands of B. V. Page, would have constituted a debt to her, which said Page had a right to pay at any time, either in money or by said conveyance; that the same were trust moneys in his hands, and in justice and equity ought to have been paid; and, moreover, no creditor of said B. V. Page, or of any firm of which he was a member, would have any right to impeach such gift or conveyance, for he was then in good financial condition and entirely able to make such conveyance, and this without working injustice to any creditor; that H. D. Moore has filed a cross-

bill herein, and a pretended corporation called the International Mutual Exchage and Investment Company, and Henry Root has also filed an intervening petition, and have obtained leave to become parties defendant hereto, but have not taken any further steps, and this respondent does not know whether they wish to proceed by cross-bill or otherwise; but in relation to said claim of Moore and the claim of Root and said Investment Company, this respondent says that the same is brought to recover not an individual indebtedness of said B. V. Page, but a copartnership indebtedness of the firm of Page & Sprague; and even if this homestead premises had not been bought by this respondent herself with her own means, and the title had really been in B. V. Page beneficially, then B. V. Page would be indebted to this respondent, and she would be his individual creditor for the whole proceeds of said Erie street property, amounting to about $31,760, and as such individual creditor she would be entitled to priority of payment out of the individual property of said B. V. Page as against any copartnership creditor of the firm of Page & Sprague, and entitled to retain the property received by her from Hoyt in part satisfaction of said debt from Page to her, and after crediting said money so received from Hoyt, said B. V. Page would still be indebted to her in the sum of about $16,000.

Defendant denies that any indebtedness set up by the bill, cross-bill, or petitions existed prior to or at the time, she acquired her separate estate, as aforesaid; and avers that each and every parcel of indebtedness has arisen since then; as to all other matters in said bills contained defendant has no knowledge of them, or any belief, except that on information and belief she denies that any conveyance mentioned therein was made for the purpose of hindering or defrauding creditors, and says that her husband has struggled to the utmost of his power against declining fortunes and has

exhausted all his resources to meet and satisfy all his debts and liabilities.

Signed by solicitor and not sworn to.

March 4, 1878. Answer of Henry J. Willing. He has no knowledge of the indebtedness of Page to him; he has no property belonging to Page in his possession or control except by way of mortgage hereinafter mentioned; he is not indebted in any way to B. V. Page, or any other person.

That on March 4, 1876, B. V. Page applied to him for a loan, to be secured by a conveyance by B. V. Page and B. F. Page, of the north half of lot 19, block 18, Bushnell's Addition to Chicago, or by such other security as should be acceptable to this defendant; that Page asked defendant for a loan of $1,000, but he would not loan that amount to Page on the security; he agreed to loan him a certain amount. In pursuance of such arrangement, B. V. and B. F. Page conveyed to him by warranty deed, dated February 28, 1876, and recorded March 4, 1876, said last above described premises; that although said deed was in form an absolute deed, it was taken by way of a mortgage.

That within a day or two after said deed was recorded, defendant advanced to page $5,000, taking his note therefor, and a short time after that advanced $3,000 more; that said $8,000 is still due, with interest since about 1877 at 7 per cent.; that said sums were paid to Page in accordance with the agreement under which said warranty deed was made, and as the money intended to be secured by said warranty deed.

That some time after the making of said loans, and for further security therefore, the said B. V. Page, of his own motion, delivered to this defendant two certificates of stock each calling for 50 shares of the capital stock of Page, Sprague & Smith, one being issued in the name of William

Sprague and indorsed by him in blank, and the other issued in the name of B. V. Page and indorsed by him in blank; that said shares of stock, however, had never been transferred on the books of the corporation; that on the 28th of January, 1878, being unwilling to hold or retain the said certificates, he returned them to B. V. Page.

That some time after March 6, 1876, said B. V. Page, of his own motion, conveyed to defendant a deed of certain property in Evanston as security for said loans; that defendant took said deeds, inquired about the property, became satisfied it was of no considerable value, and meeting Page, handed the deeds back; defendant took no memorandum of the land described in in said deed, and knows no way of ascertining the description therein, except from B. V. Page, and Page is now temporarily absent from the city. Defendant submits to the court whether said transaction amounts to a delivery and acceptance of said deed, and a conveyance to him of the land therein described. Defendant has never in any way attempted to hinder or delay any creditors of B. V. Page.

December 8, 1880. Answer of H. J. Willing to amended and supplemental bill, adopting his former answer.

Amended cross-bill of Horace D. Moore, filed Dec. 8, 1880, makes Belle F. Page defendant to the amended and supplemental bills, a party defendant to his said cross-bill, and adopts and repeats all the matters and allegations of his said cross-bill, and of the said original, supplemental and amended bills relative to said Page & Sprague and said Belle F. Page and all other matters in said bills, and claims relief, as in and by the said bills has heretofore been claimed.

December 8, 1880. Answer of Belle F. Page to the amended cross-bill of H. D. Moore, adopting her former answer.

December 29, 1880. The following order was entered: On motion of the counsel of the plaintiff, it is ordered that they have leave to examine Mrs. Belle F. Page, before H. W. Bishop, Master in Chancery, this order made without prejudice, and counsel for Mrs. Page exceps to said order. It is further ordered that counsel for plaintiff have leave to examine C. H. Mullikin, touching the account filed herein on the 28th day of December, 1880.

Subpœna in Chancery in the orignal cause for Belle F. Page—dated January 10, 1878—served January 11, 1878.

MASTER'S REPORT.

To the Honorable Judges of said Court:

The above entitled cause having been referred to me as Master in Chancery of said court, by the orders of said court entered herein on the fourteenth day of January, A. D 1878, and an order entered on the eight day of December, A. D. 1880, and the twenty-ninth day of December, 1880, I hereby report that having notified the parties interested, of a hearing before me under said order, I was attended on the twenty-first day of January, A. D. 1878, and by adjournment on various occasions, by counsel for the parties interested, and by the various persons as set forth in the copies of the examination and testimony herewith returned, which examination and testimony were duly taken under said orders.

All of which is respectfully submitted.

Henry W. Bishop,

Master in Chancery of the Circuit Court of the United States, for the Northern District of Illinois.

The examination of William Sprague, one of the defendants, taken January 21, 1878, under the order of January 14, 1878. Examined by Mr. LeMoyne.

Have been in partnership with Benjamin V. Page for 15 years; we have been merchants dealing in paints and oils; manufacturers of oils; have had real estate and all sorts of interests together; we have not held title to much real estate as partners; Page did not hold in his own name partnership real estate; Mr. Page and his wife at one time conveyed to me some property on North Dearborn street, where he lived; no consideration paid for the conveyance.

The property conveyed to me by Mr. Page, on North Dearborn street, I afterwards conveyed to Belle F. Page.

There was no consideration for the deed.

I think I never made any other conveyance to Belle F. Page. I don't remember the year in which that conveyance was made. Belle F. Page is the wife of Benjamin V Page.

The firm of Page & Sprague was a firm independent of Page, Sprague & Smith. They haven't done any business for the last half dozen years, but they kept up the firm name.

Examination by Mr. Leake.

Q. You have been in the mercantile business during that time?

A. No, sir—renewing our debts.

Q. The debts that were contracted prior to the last half dozen years?

A. No debts that were contracted prior to the last—since the panic. We didn't have any debts of any consequence before the panic. I have no doubt all these real estate transactions appear on the books of Page & Sprague; I have not seen the books personally for two or three years, but have no doubt they all appear on the books; the books of Page & Sprague are entirely separate from the books of

Page, Sprague & Co. Mr. Page had charge of the books for the last two or three years. When we made up the corporation, "Page, Sprague & Smith," we had surplus of $60,000 and called it $100,000 for the purpose of incorporation, but no estimate was made by anyone but ourselves. I think we must have over-estimated the assets a good deal. After making the new corporation we found ourselves unable to pay the debts, and had to made a compromise on the 22nd of last August; we settled at fifty cents on the dollar, which left us nothing, I think. We have not made that promised settlement yet; we have made two payments on it—paid about two-thirds of the compromise; the compromise didn't inclune all the debts of the firm. Our sales have been not to exceed $253,000, and we made a loss during the year. Since the fire Page & Sprague have done no other business except their paint and oil business, except loaning money to Samuel Walker; I believe that got to be the principal business of Page & Sprague. I think we have Walker's notes and checks for over $100,000; I think we have Mr. Norris' paper for about $50,000, and William Sturgis' for about $10,000; we had the money and loaned it for the interest. Joseph E. Young was formerly president of the Chicago, Danville & Vincennes Railroad Co. He went through bankruptcy. We got a lot of paper from Pickett by indorsement of Walker. We got some notes of Philpott indorsed by Walker. These securities all appeared on the bankruptcy and have all been sold out from under us by first mortgages. We didn't always have the title examined when we loaned money; two per cent. a month was what we usually got from Walker, I think; sometimes more; I do not think we ever got any money on our indorsement for Honore or Walker; Page took about $50,000 of Danville bonds and sold them to Alden Sampson for Samuel J. Walker (Page & Sprague had no interest in them), and the interest was not paid. Page & Sprague paid

it for some time, and finally Page gave the note of Page & Sprague for the bonds to Alden Sampson; Alden Sampson is a friend and relative of Page's, and he didn't like to have him lose on the bonds. We bought and paid for the paper of Joseph E. Young; probably we got the notes from Walker; the first two pages of that schedule foot up to $146,000, and I think we gave dollar for dollar for it. We paid Honore money for his checks for Wren and Brewster, and the checks were dishonored; I think the whole collapse came in the September panic. That ended the whole of the transactions. I can't tell how much of this money we got security for. Most of our money loaning business was done since the fire entirely I think; I think we took some of Walker's paper indorsed after the panic; most of it was taken before or shortly after the panic; we always had good hopes of getting something out of Walker's transactions, with the securities we had. I think the assignment I made to Mr. Kerfoot was a general assignment of everything; I don't think the personal property was specified; it was drawn by Mr. Miller, and was very comprehensive.

Examination of B. V. Page, taken January 21, 1878, under the order of January 14, 1878.

Examination by Mr. Miller.

I had last May all of the Honore and Walker and other paper that I have scheduled; we lost money on that paper, the whole of it except part of it which was collateral; we loaned money to S. J. Walker and took the securities that he gave us; this paper represents the amount we loaned; there are three pages of paper in the schedule all marked "bad;" as far as I know the Walker paper represents the amount of money we let him have; in addition to the paper we got ninety lots north of Twelfth street and east of Ashland avenue, subject to a first mortgage of about $500 a lot; the property was worth at the time we took it $1,500

per lot; Philpott's paper, however, was scheduled; we also had two notes $25,000, secured on block 5 in Walker's subdivision down here with a bogus security; we supposed it to be all right; he brought Jewett's opinion of the title a few days previous to the time and gave it to me showing good title in him; we found out after the panic that the title had never been in the man; we took his word for it and Jewett's opinion; my impression is that we had no property in our name on May 15 last; that we have not now; there were judgments against us and we conveyed our property before any judgments; I can not tell about personal property with any certainty; we have always had some hopes of getting something out of this Walker paper; We never gave it up till we lost those sixty lots two or three months ago; a year ago we thought we were going to get a large portion of it; I thought we would get $50,000 from these 60 lots; there was another $25,000 secured by a tract at the crossing of the Burlington and Pan Handle roads; we released about three-fourths of it after the panic for $8,000 or $10,000 from Walker; we loaned that $25,000 on a second mortgage on these four blocks; my schedule shows that $25,000. Only recently have I lost all faith in Walker's securities; I stopped loaning Walker money when the panic came; I think his paper is all dated at that time; I had transactions with Honore at the time of the panic and I think I had about $25,000 of his paper two or three months after the panic, but for this I got certificates; at the time the Badgers went down Honore bought these of me and gave me his paper for them. There have been no changes in Walker or Honore paper since that time.

Our loans to Walker were always on very short time; he often gave us a check dated 15, 20 or 30 days ahead; everything stopped when the panic came; up to that time he always paid everything.

These checks (indicating checks), were ones left on our hands at the time of the panic. I didn't have security on any of these papers spoken of except Walker's. The indebtedness to Alden Sampson arose in this way: I went to New York with $45,000 mortgages of the Chicago, Danville & Vincennes Railroad, and notes signed by J. E Young, running two, three and four years, guaranteed by the Danville road, and got money on them for Walker; it was about $30,000, and I took the bonds down to get the money. Sampson offered to discount them for them, and I agreed then and there to see them paid before I came away from there; I agreed at the time he discounted them; I agreed at that time to see that he would get his money out of it; the paper has always been guaranteed virtually; perhaps it was not down in writing first; I am pretty sure the bonds were guaranteed in writing at the time Sampson got them; I gave him a memorandum guarantee in writing when he gave me the money; when some of the notes matured, he insisted on the money, and deed him some property down on the river here, I never indorsed the bonds on the back of them; if it is material I think I can show that I delivered the memorandum guarantee in writing at the time I got the money, by sending down there and getting it; I think if he had it then it is propable he has it now; the deed to Sampson of this property was made at his request; I think he took my statement in regard to the property; he sent his son out to see it after he got it; it was in the fall of 1872 that the bonds were negotiated; Sampson still holds these bonds.

In the spring of 1877 I made a conveyance to Horace D. Moore; he knew of it as soon as it was made; I advised with Mr. Eames about it, who had always acted as Mr. Moore's agent; Mr. Eames knew about it and advised me to make it, and said if we did, Mr. Moore would release our notes; I dont know whether I informed Mr. Moore; I

think Mr. Eames informed Mr. Moore of the transaction; I think I filed the deed for record myself; Mr. Moore went and got it from the recorder's office. I filed the deed to Henry Sampson for record. I got the deed from the recorder's office; that was my habit.

I know of a conveyance from Sarah J. Maxwell to Belle F. Page, my wife. It was made about the 15th or 25th of October last. She conveyed some houses up on Lincoln avenue. The negotiation was carried on through me. Mr. Osborne acted for Mrs. Maxwell, as her attorney. The negotiation culminated when I paid the money I owed Mrs. Maxwell.

Q. What was the consideration of the conveyance to Mrs. Page?

A. Mrs. Page loaned me—

Q. No. What was the consideration for the conveyance?

A. A quit-claim deed.

The consideration named in it was, I suppose, one dollar.

There are six buildings on that property, five of them dwelling houses, and one of them a store. I erected them with William A. Furber, a builder. They cost $9,000 or $10,000. I borrowed $5,000 from Mrs. Maxwell, and it was mostly invested in the houses. From four to five thousand of it. That was all I furnished. I furnished nothing in the way of material. The corporation of Page, Sprague & Smith furnished about $250 worth of window glass and I paid them out of the money I stated. That was included in the $5,000.

Mrs. Maxwell did not, at that time, hold the title to the land. Mrs. Maxwell acquired title when I borrowed the money from her. That was in the fall of 1876 I conveyed to her. My wife joined in the deed; the houses were going up at the time.

Baird & Bradley furnished the rest of the money to put up the buildings and buy the land. I bought the land in September or August, 1876. I paid about $4,000 for the land. I expected the $9,400 to cover the cost of land and building, but it did not. We had a bad contractor and he failed. I had to put in additional money. Part of the money I borrowed on my note. I borrowed the money and paid the whole consideration for the property.

When I borrowed the money from Mrs. Maxwell, I gave her an absolute deed. I took something to show there was a right of redemption—while she held it there was nothing on the record to indicate my interest in it. It remained that way till Mrs. Page got the money to pay her, until October 15th or 25th, until it was deeded to Mrs. Page. I requested Mrs. Maxwell to make the deed to my wife. Up to that time I had received the rents that came from the property. I have collected the rents since. It has rented for about $125 a month. There are six tenants. $125 is about all I have received a month. Two of the houses are $30 a month, two of them $25, and the others $20, if I recollect right. That includes the store.

Q. That would be $140.

A. I think the rents have not all been collected.

Q. Were you ever the owner of Lots 17, 18 and 19, in Block eighteen (18), of Bushnell's Addition?

A. I was.

Q. Did you join in conveying them to Mr. Sprague?

A. Yes, sir.

Q. At whose request did he convey that to your wife?

A. Mine.

Q. How long had you held the property?

A. I owned it in 1869 and 1870?

Q. Whom did you buy it from?

A. William G. Lewis.

Q. Who paid for it?

A. I did.

Q. Who built the house on it?

A. I did.

Q. What did the house cost?

A. $45,000, or thereabouts.

Q. Give me the number on Dearborn street that you owned. Was it three full lots?

A. Three full lots.

Q. 150 feet, then, was it?

A. Yes, sir.

Part of Lot 19 is now held by Henry J. Willing. He loaned $8,000 on it—on 25 feet of it, and $5,000 of it went to Page, Sprague & Smith, and $3,000 to the Union Oil Co. He had additional security of 50 shares of stock in Page, Sprague & Smith, and 50 in the Union Oil Co., which turned out worthless. Also two or three lots in Evanston, which I had forgotten all about. Willing did not record the deed to the Evanston lots, because he said he had found out it was not worth recording. Willing has never got back a cent of the loan or any interest on it. It is all still due, except about six months' interest. The conveyance to Willing was by straight deed, and he gave me a memorandum back. I will try and produce the memorandum. Giving security on land by absolute deed is the usual way I do. It is the only way I ever give security.

Mrs. Maxwell did not give me any memorandum back when she got the absolute deed.

Q. What did you do with the balance of the lots 17, 18 and 19, in Bushnell's Addition?

A. I sold to John L. Peck the 60 feet, that was the south half of Lot nineteen (19) and the north thirty-five (35) feet of eighteen.

Q. How much did you get for it?

A. $250 a foot.

Q. When was the sale made?

A. I don't know; two or three years ago.

Q. What did you do with the balance of it?

A. Mrs. Page holds the balance of it.

Q. How much is the balance?

A. 90 feet.

Q. That is still in her name?

A. It was only 35 feet that I sold to Mr. Peck; I said 60. I had 60 feet left north, but it was only 35 feet I sold to Peck, at $250 a foot.

Q. That was only 10 feet off.

A. Yes, sir, and leaving 90 feet.

Q. And Mrs. Page still holds it?

A. No, sir; she don't still hold the property. It was sold.

Q. I asked you what was done with the balance and you said Mrs. Page held it.

A. It was sold to William M. Hoyt.

Q. When was that sold?

A. In September or October, 1877.

Q. Who sold it?

A. William D. Kerfoot.

Q. Who employed William D. Kerfoot?

A. I did.

Q. How much did you get for it; how much was the purchase price; at what price was the property sold by Kerfoot for you?

A. $45,000.

Q. On what terms were the payments made?

A. Cash.

Q. All cash?

A. All cash.

Q. Where is the money?

A. Well, the Connecticut Mutual and the taxes and other things got up to $16,000 of it. The Connecticut Mutual mortgage was $23,000 and interest.

Q. How much interest?

A. I don't recollect, but the interest and taxes made it about $29,000, as I recollect.

Q. Was that your mortgage to the Connecticut Mutual?

A. No, sir. It was William G. Lewis.

Q You had bought subject to a mortgage?

A. Yes, sir.

Q. Was that mortgage on there when you built the house?

A. Yes sir.

Q. What did you do with the other $16,000?

Objected to.

A. Well, in September, 1876, Mr. Maxwell died. I was appointed administrator of his estate.

Q. I am asking about the money in 1877.

A. I can't tell you any better than this way that I know of: I was appointed administrator of his estate and received $10,000 life insurance. Contrary to the advice of Gen. Leake, I used that $10,000 life insurance in the oil company, to protect, as I supposed, the Maxwell interests, as well as the rest, and I thought I should succeed in doing it, and the thing went to pieces, and I tried to sell that house forever after that to get that $10,000; and just as soon as that house was sold I took Mrs. Page's loan. She loaned me $10,000. Representing that estate, I had paid Mrs. Maxwell about $2,000, the widow's award, out of the property.

Q. Out of the life insurance?

A. Well, out of the administrator's property.

Q. You mean $10,000 was the aggregate amount you received from the Maxwell estate?

A. Yes, sir; and I had paid back $2,000 or a little over that. About $8,000 was immediately replaced to the estate, and I felt happy.

Q. I understood you to say that you paid all the surplus $8,000 to Mrs. Maxwell.

A. No, sir. I had been appointed administrator of the estate of Maxwell, and it received for life insurance that belonged to the estate of Maxwell $10,000 that came into my hands. I invested it, thinking to save his interest and my own, in the Union Oil Company right straight through, and Gen. Leake told me I was a fool to doit at that time. However, I did it, and it worried me to death, and I tried to sell that house to get that trust fund back, and just as soon as the money came into Mrs. Page's hands she loaned me $8,000 of it to replace that.

Q. She loaned you $8,000? What did you do with it?

A. I have got it in my possession as administrator of that estate.

Q. You have got it now?

A. Yes, sir.

Q. Where is the money?

A. It is in my possession, and I can produce it here, if you want to see it, as administrator of that estate.

Q. You haven't it in your pocket?

A. No, sir.

Q. You have it in the bank?

A. No, sir.

Q. What is the form of it? Is it in a bond?

A. $5,000 of it is in South Park bonds and $3,000 of it is in money.

Q. When the money was handed to you by Mr. Kerfoot as the purchaser of the property, where did you take the money to?

A. That I don't recollect; I know I replaced it to that estate just as quick as I could do it.

Q. When you got the money did you get it in Kerfoot's office?

A. I got it in Mr. Hoyt's office.

Q. He paid you a check, did he?

A. Yes, sir.

Q. How much was that check?

A. Well, I don't recollect that; I think the check was about $16,000.

Q. Where did you go with that check?

A. I went up to the Union National Bank.

Q. Did you deposit it there?

A. No, sir; I went up there and got it certified or drew the money, I have forgotten which.

Q. When did you go there?

A. My impression is I placed it to Mrs. Page's credit at the First National Bank at that time.

Q. Is it there yet?

A. No sir.

Q. How much of it is there yet?

A. There is sixty-three dollars.

Q. When was it drawn out?

A. It was drawn out at once to replace that estate money.

Q. Did you draw the checks?

A. She drew the checks.

Q. Did you sign the checks?

A. No, sir; she signed them.

Q. Did you have any authority to sign the checks?

A. No, sir.

Q. She drew all the checks?

A. Yes, sir.

Q. Who took the checks to get the money?

A. I did.

Q. How many of them?

A. I have taken every check that has ever been drawn.

Q. Can you produce the checks?

A. I think so; I don't know.

Q. Will you produce them?

A. I will try to.

Q. What was the date of that sale?

A. In October.

Q. Last?

A. Yes, sir.

Q. What was the date of the deed from Sprague to your wife?

A. Febuary 1875, or January 1875.

Q. You had given a bond as administrator of the Maxwell estate had you not?

A. Yes, sir; I had given Sprague and Smith.

Q. There has been no reports made to court by you of the money, or there is no change made in your liability as administrator since you have got this money?

A. No, sir.

Q. It has not been changed in any way except that you consider in your own mind that yon hold security for that bond instead of for other purposes?

A. That is what I took it for.

Q. I mean the appropriation which you say that Mrs. Page loaned you the eight-thousand dollars and you applied it that way, by that you mean in your mind's eye you applied it thus?

A. That is the reason I had to sell that house, and that is the reason I wanted that house sold.

Q. And this $8,000 you say to your creditors, when they want this $8,000 you have applied that, but you still have it in your control. That is about the position as I understand it.

A. (No answer).

Q. What was the debts of the Maxwell estate?

A. About $40,000.

Q. There is nothing to compel you to apply the money in that way, is there?

A. I suppose there is.

Q. Any more than you are liable for it?

A. It is a trust fund, I persume.

Q. But I mean to say this particular fund that you got from Mrs. Page has not been applied to discharge that liability in any way except by getting it in your control. Now if there is any other thing that has been done to apply it in that way, state what it is.

A. Well, I don't know that I want to make any further statement about it.

Q. You do not wish to make any further answer?

A. Not at the present.

Examined 22d January, 1878, by Mr. LeMoyne.

I have not the checks refered to above.

Q. Why have they not been produced?

(Mr. Isham entered his appearance for Mrs. Belle F. Page, who was made defendant by amendment January 10, 1878, and objected to that question, and any inquiring into anything that would affect her interests in this case, because I think no examination should proceed that will affect her interests, until the coming in of her answer. Mr. LeMoyne objects to Mr. Isham's appearance only for the purpose of delay, and is a stranger to the record. The question being referred to Judge Drummond, he held that the examination should proceed, but should be confined to enquiries about property that ought to be taken by receiver.)

A. Yesterday I stated that I thought that $16,000 had been deposited in the First National Bank; when I got home I found that there was only $980 there, and Mrs. Page objects to her dressmaker's checks being brought here and looked at; consequently I didn't bring them. I was wrong when I said I got the $16,000 check certified to and then deposited it in the First National Bank; I got it certified I find at the time a deposit of only $900 or $1,000 was made to her credit, at the time of receiving of the proceeds of the sale of the house.

Q. Do you mean to say that was the whole of the proceeds?

A. I do not.

Q. You mean that you did receive a check for $950?

A. I do not.

Q. What do you mean?

A. I mean just what I say. There was deposited to her credit between $900 and $1,000. That was the only deposit, as far as I know, made from the funds of that property, I think I was right when I said Mrs. Page loaned me $8,000 of that fund.

Q. When did you get that $8,000? How was that received—in currency, or how?

A. It was not in currency.

Q. How was that received by you?

A. I don't think I can state now.

Q. When you said this $16,000, after having been deposited in the First National Bank, was all drawn out but $63, were you right or wrong about that?

A. I was right about that. There is but $63 there.

Q. When you said it had all been drawn out by checks which had been drawn by you, were you right or wrong about that?

A. I don't say drawn by me; I said drawn by her.

Q. Didn't you say you got the cash?

A. I meant that she signed the checks, when I say drawn by her. I meant the checks were drawn.

Q. You got them cashed?

A. I generally did; I guess I didn't get them all cashed.

Q. Now, you stated yesterday that you got them all cashed—or nearly all cashed; now state how the fact was.

A. The fact was she paid a good many bills with that. She paid Field & Leiter's and a good many other bills with that.

I wish to correct the statement of yesterday that I got them nearly all cashed myself. She sent checks by me many times for currency. In many cases I drew currency

for her when she wanted it, and a great many checks were made to pay purchases she had made and debts she had contracted.

Q. Was the $8,000 which you say she loaned to you, drawn on a check of hers on the First National Bank?

A. I don't think it was.

Q. How was it drawn?

A. I guess part of it came into my hands as certificates of deposit in First National Bank.

Q. Had a special deposit been made for the $8,000, or was there a larger certificate?

A. The certificate was smaller than that.

That $8,000 did not come into my hands; that one certificate alone. It came into my hands with some other certificates. I cannot state what they were.

Q. Have you any record of them?

A. Certainly. I have the securities.

Q. What securities you received?

A. Yes, sir.

Q. Were the Park bonds that you specified yesterday, a part of the securities?

A. They were. That was for $5,000. I have those Park bonds now. I received them from Mrs. Page.

I don't know where she kept them before I got them. She kept them in the house. I didn't have charge of them, I took the check, took the certificate or check, whatever it was, took her certificate and brought them for her and handed them to her.

Q. How long before she transferred them to you, and gave them to you?

A. Within two or three days. It was part of the proceeds of the property on Dearborn street.

Q. The certificate you used for the purchase of the bonds?

A. Yes. I don't remember whether it was just that amount or not, whether there was something with it.

Q. Can you remember any other checks that you received from her and got cash or certificates? if so, name them.

A. I can. She has loaned me money. She has loaned the Union Oil Co. money, which it now has in its possession.

Q. Were there any checks or certificates of deposits coming from the proceeds of the Dearborn street property, given to you by her, to get cash either for her use or your own use?

A. I don't recollect; I presume so. I can't remember any particular one. Have taken checks from her to be cashed many—several times.

I gave Mrs. Maxwell, on account of that conveyance, $5,000. I got that money from Mrs. Page. I can't exactly state the form I took it in, but I took it at once from the $16,000.

Q. You took it at once from the $16,000 before giving the $16,000 to Mrs. Page?

A. No; Mrs. Page had the check first.

Q. What check?

A. Had Mr. Hoyt's check, as I recollect.

Q. On yesterday you stated that you took Mr. Hoyt's check to the Union National Bank and had it certified, and from there you took it to the First National Bank.

A. I took it home that night to Mrs. Page. That was after I got it certified.

Q. What was the amount of it?

A. I don't recollect, it was about $16,000.

Q. Was this check for $950 a part of the proceeds of that property?

A. It was.

Q. Then there was a check for $16,000 and another for $950.

A. No.

Q. You did deposit, you say, one check for $950?

A. No; I said I deposited $900—I said there were $950 deposited to her credit. I do not recollect the details of that transaction. This certificate of deposit—$5,000—was the First National Bank. In Mrs. Page's name. I cannot state the date when it was deposited.

Q. Did you receive any certificate of deposit for that $16,000 check of Hoyt's?

A. It is the $16,000 I am talking about.

Q. You are being asked about a certificate of deposit for $5,000 which you say you got from Mrs. Page to buy the bonds with; was that certificate issued in the name of Mrs. Page or your name?

A. There was no proceeds of the sale of that house issued in my name; I have handled none of them except as she loaned them to me.

Q. Was this certificate of deposit then, which you say she loaned you, paid by the Park bonds that she had in her name?

A. It was in her name.

Q. Was that certificate received from the bank, when you used that $16,000 of Hoyt's?

A. My best recollection is that it was.

I am not sure but that Mr. Hoyt gave a check for $15,000 and one of $950. Don't know whether it was in one or two checks.

Q. Now, say how the $15,000 check was used. I mean into what shape did you convert it?

A. I don't recollect entirely how I did do it, but I have no doubt but that I took it to the First National Bank, and received certificates of deposit for it in the name of Mrs. Page.

Q. It was not made a general deposit?

A. No. I find that it was not. I find that there was but $900 deposited at that—$950.

Q. The balance, according to your present recollection, was received in certificates of deposit.

A. I don't recollect anything else.

Q. Your recollection is that you received one of those certificates for $5,000, with which you purchased the Park bonds?

A. I do not think the Park bonds were purchased with one certificate. I think the certificate was part of it, but I don't recollect definitely. I think I might have had a small check on the First National Bank in connection with the certificate, or I might have had some currency or something else.

Q. Can you state how many certificates were then issued?

A. I cannot state whether they were all issued at the same time. I suppose they were.

Q. You have no recollection whether you surrendered this Hoyt check and received it all in certificates?

A. I think I must have done so in certificates, adding what was on deposit at that time to her credit.

Q. The difference between the Hoyt checks and the general credit which she received, your recollection now is you received in certificates of deposit?

A. I think so. I cannot remember how many there were, nor the amounts of any of them. I purchased the Park bonds from John Wren. Don't recollect in what shape I received the money which I gave to Mrs. Maxwell. It was not in certificates. I commenced to pay Mrs. Maxwell before the sale of the house was completed, and before I got the money out of it; and I borrowed money to the extent of part of the amount. Don't recollect how much. Borrowed it from a friend of mine. Don't wish to state for

whom, unless it is necessary. On receiving the Hoyt money I returned the money, and paid the balance to Mrs. Maxwell.

I think the money that I paid her that I received from Mrs. Page direct, was a little over $2,000, and I think I had borrowed and returned at that time the difference—about $8,000, or less than $3,000; I can learn the amount and can report it to-morrow, or at some other time.

I did not borrow it of Mrs. Page.

My recollection is that I paid Mrs. Maxwell previously about $3,000—a little less than $3,000. I borrowed before the transaction was closed with the house, to pay Mrs. Maxwell part of the amount. I paid to her $1,000, and then I paid her another thousand. At the time the house was sold I had paid Mrs. Maxwell about $3,000, leaving a balance of $2,000 yet due her.

Q. Of the $16,000 which Mrs. Page received, or you received, for the sale of the property, the two loans, the $8,000 which you said you had applied to the Maxwell estate, and the $5,000 which you paid Mrs. Maxwell on that property, would account for $13,000 of the $15,000, wouldn't it?

A. Yes.

Q. Mr. Page, was that the total amount of money that you received on that property?

A. That was the total amount that Mrs. Page received on that property.

Q. Did you receive anything?

A. I received a drawback from the Connecticut Mutual Life Insurance Co., or rather a settlement of a bill for glass that they had owed us for a time—good many years, that never went into her hands at all; that I didn't consider belonged to her. It was about $5,000.

When it was determined that the Connecticut Mutual would allow us for the glass, I went with Mr. Hoyt to the

Connecticut Mutual office and he got a release of the mortgage, which was about $25,000, including interest, and gave them a check for $20,000, or thereabouts, and gave Page & Sprague the difference. I got the proceeds in that way. I did not apply it to discharge my obligation with the bondsmen of the Maxwell estate. That was received two or three weeks later than the $16,000.

Q. You said yesterday that there was $5,000 of the money you got from Mrs. Page invested in Park bonds and $3,000 in something else. Have you got that cash yet?

A. Cash or equivalent to cash. Yes. The total amount of the proceeds of the property that went into a general deposit account at that time was nine huudred and some odd dollars. There was more deposited besides this $900 afterward, but the deposits were small in amount.

There were five $1,000 bonds.

Q. And this other $3,000 that you say is the same as cash, in what form is that?

A. I don't care to tell you.

Q. I prefer to have you answer it.

MR. LEAKE—I object to it. It is in his possession as cash and under his control.

Q. Is it wholly under your control?

A. Entirely.

Q. $13,000 of the $16,000 of the proceeds accounted for; can you account for the other three? How has that been used?

A. Mrs. Page spent some of it; she has loaned me some of it, and loaned the Union Oil company some of it. I was trying to do a little business there.

I can't tell you how much. She has loaned me as much as $2,000 of it, more. The Union Oil Company is the name of the company under which I have been trying to do a little business. It is a stock company.

Q. Then it was the same as a loan to you, was it not?

A. No, sir; loaned to the company; it was a stock company.

The company is not solvent. It was not solvent when she loaned the money to it.

Q. Then she loaned as much, you think, as $2,000 to an insolvent company?

A. Loaned it to that company.

Q. It was insolvent, you say when she loaned it to them?

A. Yes.

Q. Did the company get the use of it?

A. Entirely. I have the management of the company; I was trying to make a living out of it.

Q. Is there any way of getting the money back out of the company?

A. I don't think anybody but me could get it back.

Q. Can you get it back?

A. I don't know.

Q. Can you get that $2,000 back which she loaned to the company?

A. I don't think I could to-day.

Q. Within any reasonable time, could you?

A. I will try, sir.

Q. I am asking you whether you can or not. Is there any way of your getting that money back which she loaned to that company?

A. I don't know. It depends a good deal on the creditors of the company. Neither she nor I received any security for it when the loan was made.

Q. Did she loan it at your advice? Did she know anything about the company, or did she take your judgment on it?

A. I begged it out of her.

Q. Did she know at the time that the company was insolvent?

A. I don't think she knew it.

Q. You didn't tell her at the time?

A. I don't recollect. I don't think she knows it. I knew it at the time. I have known it since after Maxwell died, when I went up there to take charge of it. He died September 22, 1876. The Maxwell estate was interested in it. The money I used of his life insurance I put in there to try and save that property. I did it according to my best judgment. I thought it would do it.

I didn't discover that the company was insolvent, right after Maxwell's death. He died September 22, and in November or December I induced two young men to go in there and take hold of the business with me, and put some money in it, on an option to take it out after two or three months, and I represented it was good. In two or three months we found out I was mistaken. Maxwell had taken stock and reported to me from time to time before his death, but his reports of the business were mistaken. There are other persons who hold property merely as security, which is conveyed by absolute deed in the same way in which I say Willing holds the property on Dearborn avenue, and Mrs. Maxwell held property on Lincoln avenue. They are shown on my bankruptcy schedule. I don't remember except that stated in the bankruptcy schedule.

The examination of the witness was objected to except so far as it tends to find assets to be turned over to the receiver.

Examination of B. V. Page, defendant, resumed on January 24th, 1878.

Being asked if he could at this time account for all of the money which came into his hands, or the hands of Belle F. Page, from the First National Bank, part of the proceeds of the Dearborn avenue and Maple street property he said he could not. Mrs. Page got the balance of the $16,000, after loaning me $8,000 to pay the Maxwell estate, and $5,000

used to pay the incumbrance to Mrs. Maxwell on the Maxwell property. I never had the use of a dollar of her money.

Q. Did you give any of the money received from Hoyt to Mrs. Page?

A. Every dollar of it was handed to Mrs. Page at once. I never had the use of a dollar of it for a minute.

Q. Didn't you take it?

A. I took it for her and to her at once; I gave it to her. She at once devoted between $7,400 and 7,500 of it to make good the administratorship of the Maxwell estate. It was understood that the house should be sold. One of the reasons for selling the house was that she wished to make good that administratorship. The precise amount of that is $7,439.27. She paid to Mrs. Maxwell, I said, $5,000 in round numbers; it was a little less than $5,000; the cost of building the Lincoln avenue houses, with the cost of the land, above the amount that was borrowed from Baird & Bradley on mortgage. She took the legal title from Mrs. Maxwell, who held it as security then. The exact amount of it is $4,515. Mrs. Page has the rest, or had it. She has loaned the Union Oil Company $2,000; aside from that, I do not know what she has done with it. About $950 was deposited in the First National Bank, and certificates of deposit taken for the rest. I don't recollect how many certificates. I don't know but there were more than two; I don't remember. I took them made in her name from the bank, and gave them to her. I carried the check from Mr. Hoyt and took certificates of deposit from the bank; the check was made payable to Mrs. Page, and certificates of deposit were made payable to Mrs. Page; I do not know where those certificates of deposit are; Idon't know where I last saw them; I certainly saw the certificate used in in the purchase of the South Park bonds, for I bought the Park bonds; I don't know how large the certificate or certificates were; the Park

bonds were $5,000; I don't remember what was done with any other certificates; Mrs. Page indorsed that certificate; I did not; I do not know whether I paid it directly to the party from whom I purchased the Park bonds, or whether I drew the currency on it, and then went and paid for the Park bonds.

Q. In order to save calling Mrs. Page as a witness, I want you to remember where those certificates went, if you can, when you last saw them; you say Mrs. Page has not got them; we want to know who has.

A. I haven't a question but the First National Bank has got every one of them canceled; they were canceled a long time ago, from time to time; I never used any other of those certificates, except to draw money for Mrs. Page; when, I don't recollect; it is some time ago.

The house was sold in October, between the 1st and 15th of October. I have forgotten the details of it, and cannot tell of but one of those certificates, nor how many there were.

Q. Nor what you did with any but one?

A. No, sir; oh yes, well, I don't know.

Q. Now what is it?

A. I can't tell the details.

Q. You say that one of them—You just suggested that you had some remembrance about it. Where do you think you put it?

A. I can't remember.

Q. Has money been flush with you since the 18th of October?

A. I have not had the use of a dollar of that money. I have undoubtedly carried some of it to her. She has had the use of it all. I don't know how much I carried to her. I have stated that it has all gone to her.

Q. Did you at any time deliver up at the First National Bank any of these certificates of deposit?

A. I haven't a doubt but that I did, but I can't remember—I don't remember how many.

Q. Then I understand you to say that you can not tell how a dollar of that, beyond that you have accounted for, was expended, or how it has been used?

A. I have accounted for the most of it, I can not for the rest.

Q. Not a dollar?

A. I can tell you that Mrs. Page spent some money at Field & Leiter's, and some money at some other places but I don't know the amounts. I have no definite recollection of them. The amounts she spent were small.

Q. They would not exceed more than $200 or $300 of it. Now where is the rest?

A. She must have it. She has or has had all that I have not stated to you.

Q. It has not been expended anywhere to your knowledge, has it? Any of it besides what you speak of?

A. I don't know of its being expended, besides what I speak of. I stated I had no doubt that those had been turned into the First National Bank and canceled, all of them. I have accounted for most of that money. I have told you where most of that money went to. The rest of it is two or three thousand dollars, and I don't know where it is.

Q. The rest of it is about $6,000, is it not?

A. No, it is not; it is about $3,000.

Q. $7,500 of that $16,000 you took to Mrs. Page went to the Maxwell estate. In what form and through whom did the Maxwell estate, if it did receive that sum, receive it?

A. I received it as administrator of the Maxwell estate from Mrs. Page, in the form of certificates and money. I can not answer exactly as to whether it was part certificates and part currency. It was mostly in certificates. I can not

state approximately how much of that $7,500 consisted of certificates, and how much of currency. I have made careless statements here. I should say the larger part of it was certificates of deposit. I received the certificates from Mrs. Page. If I received it in cash, I received that from her also. In what form I don't remember. I can't tell whether I received it in the form of a check or in currency.

Q. In what form did you pay it over to the Maxwell estate?

A. I laid it away and put into securities. I laid it away in a drawer at home and locked it up. Probably in the shape of certificates. I don't remember in just what shape I received it all. I received in cash money or its equivalent $7,500, and laid it away and locked it up for the Maxwell estate. I cannot tell you any more definitely.

Q. Did you not, after the sale or prior to that, act as the business person for Mrs. Page, or did she attend to those negotiations, and gather this money together herself, and make those payments?

A. I suspect that I acted as her business agent to some extent?

Q. That being the case, if there was money drawn for the purpose of paying this claim to the Maxwell estate from that bank, was that money drawn by Mrs. Page and paid to you, or was the check given you to enable you to draw it?

A. The things mostly went through my hands all the time. I can't remember the details of that matter.

Q. You received those certificates which constitute a portion of this $7,500 from Mrs. Page, did you not?

A. I received the whole thing, whatever I did receive, from Mrs. Page. I received those identical certificates referred to, that constituted a part of the $7,500 from Mrs. Page.

Q. Did the amount which you received constitute the whole sum in certificates?

A. I told you I didn't know.

Q. Did Mrs. Page pay you over at that time any cash, as a part of the $7,500?

A. I won't answer any more questions about it. I have answered them enough.

Q. I shall have to insist upon the examination.

A. I don't remember.

Q. You remember nothing at all about it?

A. No, sir.

Q. When you paid Mrs. Maxwell, you say $4,500 upon this property north, in what manner was that paid to you by Mrs. Page?

A. I don't remember.

Q. Was it paid to you in cash?

A. In cash, or its equivalent.

Q. Do you remember at all whether it was paid, the whole $4,500 to you in currency or not?

A. Well, it was partly a certificate, I don't remember.

Q. Then the balance was in cash, either currency or check, was it not?

A. I don't remember.

Q. Who delivered that money to Mrs. Maxwell?

A. I delivered it to Mrs. Maxwell or her agent. Her agent was her attorney, Mr. Osborne.

Q. Did you obtain a receipt for it?

A. It was not all paid at one time; it was part of it paid before the sale of the house was completed. It was about $3,000.

I don't remember whether it was paid by check or in currency. I think it was not by certificate. It was before the house was sold. I borrowed that $3,000, part of it from Page, Sprague & Smith, and part of it from the Oil Company.

Q. Was there no portion of that $3,000 that came from Mrs. Page?

A. I replaced it as soon as she paid me the money. I replaced it by paying money back. I presume I paid it back in the shape of a check. I don't recollect.

Q. Who drew those checks?

A. I don't recollect how it was done.

Q. Was it a part of Mrs. Page's money?

A. It was.

Q. If the checks were drawn they must have been drawn by her?

A. I don't recollect.

Q. Did you have power to draw checks for Mrs. Page on the First National Bank?

A. No, sir; I never drew one.

Q. If any were drawn, were they not drawn against the fund of Mrs. Page?

A. Any checks Mrs. Page drew were against the fund of Mrs. Page.

Q. Was it not a part of this fund of Mrs. Page's that you were paid?

A. Yes sir.

Q. Then, if any checks were drawn, they were drawn by Mrs. Page against her funds; is that correct?

A. I don't recollect how it was.

Q. You cannot recollect whether the money you received of Mrs. Page by check was through her checks or not?

A. It was through her checks or certificates, as I have stated.

Q. It was through her checks that you received——

A. Or certificates. I never loaned the Union Oil Company any money. Mrs. Page loaned it $2,000. She made a check to the Union Oil Company, on the First National Bank. There were two checks, one of them was 980 odd

dollars, and the other was between ten and eleven hundred dollars, as I recollect. I don't entirely recollect, but I have an impression they were payable to the Union Oil Company.

Q. Were those checks delivered to you?

A. They were; the Union Oil Company had the use of the money, certainly, and I did not.

No portion of that has ever been paid back.

This is in addition to the $500 I mentioned, that was loaned by her to the Union Oil Company and paid back. At first there was $500 she loaned the Union Oil Company that was paid back. It was a distinct loan from this $2,000.

Q. Who is in possession, at present, of the Maxwell house, of which Mrs. Page is the sole owner, and on which she renewed the incumbrance, as you stated?

A. It is not the Maxwell house. It is a block of houses on Lincoln Ave., that Mrs. Page is in possession of as owner; at least the property was deeded to her. Since the request to produce some bank books and check books here, Mrs. Page has an attorney and she is under his directions, and I prefer she should do as he wishes her to. I do not produce them here.

Q. For what reason?

A. I have answered it once.

Q. Did she refuse to allow you to bring them?

A. I don't state that.

Q. Did you request of her the privilege?

A. I advised with her in regard to it.

Q. Did you ask the privilege of producing those?

A. I don't think I will state any more definitely than that.

Q. You decline to answer?

A. Unless I have answered.

Q. Did she refer you to her attorney?

MR. ISHAM asked if the books were in his possession and control.

A. No, sir; they are not.

I don't think I advised with her attorney in reference to the propriety of bringing them here. I don't recollect.

Q. Did he advise you or her not to produce them?

Objection.

A. I refuse to answer by advise of counsel.

Objection sustained by Master.

I gave up to Mr. Sprague all my interest in the Page, Sprague & Smith corporation before November. At the time the store failed I told them I would retire from it entirely; that they might consider me to have no further interest in it. That was about the first of August last year

Nov. 27th, 1880.

Application of witness on signing the foregoing testimony to make to make the following explanation:

"I wish to correct my testimony, commencing, I think, on page 93, regarding the Dearborn and Maple street house. I testified that I bought and owned that house; I testified carelessly; I held the legal title to it, but it was bought and paid with Mrs. Page's money and property and I never owned it; Mrs. Page never knew it was deeded to me until after it was transferred to her, and I still owe her upon her own separate property some $10,000. The house built after the fire was built with funds belonging to her."

Examination of B. V. Page, defendant, taken 14th Dec., 1880.

Present—J. S. Miller, for complainant, H. T. Helm, for H. D. Moore, J. V. LeMoyne, for Inter. Mut. Ex. Co., Wm. Burry, for Mrs. B. F. Page.

Q. Mr. Page, in the explanation that you added to your former testimony, you say that you have heretofore testi-

fied carelessly—to what part of your testimony does this apply?

Counsel for Mrs. B. F. Page, objected to any further examination of B. V. Page, on the ground that he has been examined and cross-examined, and his testimony signed; that the case has since been put at issue and referred to the Master for proof; and insists that, if his testimony is taken now, it shall be taken as that of a witness, and not of a defendant.

Objection overruled by Master, and certified to, and overruled by Judge Drummond, who decided that Mr. Page could still be examined as a defendant; and, therefore, the examination of B. V. Page as a defendant, and under the order of January 14, 1878, was proceeded with.

Notice by counsel for Mrs. Page that he shall insist before the court that the further testimony of Mr. Page be considered as a witness.

A. It applys to questions put to me by Mr. LeMoyne, respecting the ownership of lots 17, 18 and 19, in block 18, in Bushnell's Addition. I don't remember that it applies to anything else.

Q. Was that statement made by you after consultation with any attorneys, if so, with whom? Objected to.

A. When I was sent for to sign this testimony, almost three years having expired, I didn't remember clearly what it contained, and I went to Mr. Isham and asked him on behalf of my wife to allow some one to look it over with me, and it was read to me at my request; and when it was read I saw the mistakes I had made.

Q. Then you did not discover that any mistakes had been made until about three years after the testimony was given?

A. Yes, certainly I did.

Q. When did you first discover this?

A. I can't tell you; immediately after the testimony was given, probably. I don't remember when. But what I wish to say is that I didn't read the testimony for so long a time that I didn't recollect exactly what it contained.

Q. When did you then recollect that there had been any mistakes made in it?

A. After the testimony was given, I think it was Gen. Leake that called my attention to the fact that I probably didn't see the point of your questions when asked in regard to lots 17, 18 and 19, in Bushnell's Addition. I think it was Gen. Leake that told me—talked it over with me. He was at that time my attorney.

Q. Was it after you had the point of the question explained to you by counsel that you discovered that you had testified carelessly?

A. I don't recollect.

Q. You don't recollect of making that discovery before that time?

A. I only know that my testimony there is incorrect. I wish to say I was in great trouble at that time and being questioned and cross-questioned by half a dozen lawyers perhaps I was a little confused.

Q. Then I understand you to say now that this correction was made by you in your testimony after revising the testimony in company with Mrs. Page's solicitor?

A. I went to Mr. Isham and asked him to have some one read that testimony over to me or with me.

Question repeated.

A. I didn't receive any testimony in connection with Mrs. Page's solicitor.

Q. Re-read it—reviewed it.

A. It was after it had been read to me by some one in the office of Mrs. Page's solicitor that I corrected the testimony.

Q. Did they call your attention to the form in which

your answers had been given in the testimony in this regard?

A. I don't think so. I think my attention was directed to it as it was read to me.

Q. When you say that you testified carelessly, do you mean that you testified erroneously?

A. I mean that when I testified, I probably didn't see the point of your questions as I see it now.

Q. But you were not answering because you saw the point, were you? but because you were stating the facts as they occurred?

A. Well, I answered erroneously.

Q. Because you didn't see the point?

A. Yes, I didn't see the distinction you meant to make. My answer in regard to the amount I paid for building the house was perfectly correct. I don't know at the present time whether the property was conveyed to me by William G. Lewis or Mrs. William G. Lewis. I can't tell whether I knew at the time I gave the testimony before.

Q. Was your recollection better at the time you gave that testimony, or three years subsequently, when you re-read, in company with Mrs. Page's solicitor?

A. I can only say that my testimony three years ago, there, is incorrect.

Q. According to your present recollection?

A. According to these facts. I have looked up the facts since then. I have not looked up the facts as to whether the deed was made to me, as stated in former examination or not. I have not looked up the amount I paid for the building of the house after the fire. When I stated that I joined in conveying that to Mr. Sprague, and that Mr. Sprague had, at my request, conveyed it to Mrs. Page, it was probably correct.

It was erroneously stated in my former testimony, that I was the owner of lots 17, 18 and 19, and that I paid for

them, whereas, they were paid for by property belonging to Mrs. Page; that property was paid for by proceeds property belonging to Mrs. Page. I don't recollect of any other statement in my former testimony that was erroneous. I stated all that I cared to—all that I recollected or thought of there.

Q. You say you don't own those lots? do you mean to say you never owned them?

A. I never owned them.

Q. Did you ever have any interest in them; if so, what?

A. They were paid for with Mrs. Page's money, and it was intended they should be deeded to her at the time the purchase was made. It was a mistake, they were not. It was the mistake of the attorney who made the papers. I don't recollect the attorney. It might have been mine in not giving directions properly.

Q. Did you ever have any interest in those lots; if so, what interest?

A. They always belonged to Mrs. Page. I never owned them.

Question repeated.

A. I am not aware of ever having had any interest in them, excepting that Mrs. Page is my wife, and the interest I might have from that fact. Either Mr. or Mrs. Lewis, or both, conveyed them to me. I don't recollect to whom the deed was delivered. I don't recollect the details of the transaction. I don't know whether it was delivered to me or Mrs. Page. I don't recollect when I first discovered the mistake had been made of conveying them to me. It is my impression that I knew it at the time, and had always known it, for it had been in my mind to transfer the property, but I didn't consider it very important, thinking it could be done at any time. I don't know whether I filed the deed for record. It is a dozen years or more ago. I can't tell definitely what was the purchase price of those lots. I have

an idea about it, that it was a house of Mrs. Page's on the corner of Erie and State St., she assuming a mortgage on the Lewis house, and $5,000. The mortgage assumed was $30,000.

Q. Who assumed that?

A. The purchaser of the house assumed it.

Q. Didn't you assume that and agree to pay it? [Objected to as leading and hearsay.]

A. Very likely. I don't remember anything about it, I don't know whether the assumption by me is shown by the deed.

I paid the $5,000 for Mrs. Page. I got the money from her, from property of hers that I had sold. I got the money from the other property within a year—it might have been six months, or even three. I sold it for money, or for notes that were equivalent to money. That property of Mrs. Page's was the house next to the corner of State on Erie street—next to the corner house east of State on Erie. This is the second house; another house next to it I traded for the Lewis property. I sold one to Charles Gregory; I think for $13,000. Part of that money went to pay Mr. Lewis for the property on Dearborn street. That property on State and Erie streets had stood in Mrs. Page's name since 1864 or 5. It had been bought specially for her. I don't recollect how much of the proceeds of the house sold to Gregory I paid to Lewis. I merely give my impressions of the purchase money of the Dearborn street house.

The sale of the house to Gregory must have been some time within six months, or a year before the purchase from Lewis.

Q. Who held the money between the time of the payment to Lewis and the receipt from Gregory, Mrs. Page or you?

A. I had held it. Mrs. Page objected to selling it to Mr. Gregory for a long time, because she had no use for the

money, and she said she would rather have it in the house, but finally she consented. In the meantime I had the money. I don't recollect that any money was paid to Lewis from sales of property on the West side. I recollect of the sale of some property on the West side. Mr. Lewis had none of the proceeds of that property. I held that property for some time. Some of the property on the West side was taken for the lots; not a house sold to Mr. Starkie. I don't recollect in whose name that West side property was taken. Mrs. Page's property was sold to Mr. Starkie. I don't remember whether the title went to her or me. Mrs. Page didn't know that the title to the Dearborn street house had been taken in me, until the lot was re-deeded to her. That is the first intimation she had of the fact, according to my recollection.

Q. In all the transactions for the sale of that property, did you act for Mrs. Page, or did she act for herself or through some one else?

A. I don't recollect. My impression is that she acted in connection with me in regard to it, but that she acted in it; that it was her decision, the purchase of the property was her decision.

I think the answer would apply to the sale of the house on Dearborn street, as I recollect it.

Q. Then she assisted in the negotiation for the sale of the house?

A. She never went to Hoyt's office to see about it.

Q. Did she go to Mr. Kerfoot's office, or did you?

A. I don't think she did.

Q. Did she have any other agent but you in the matter?

A. I think so, it was Mr. Rozet. He did some negotiating in regard to it for Mrs. Page, with Mr. Hoyt, I think I don't recollect of anybody else that acted for Mrs. Page.

Q. Then your recollection is, that Mr. Rozet acted in the negotiation for Mrs. Page with Mr. Hoyt?

A. No, I said that Mr. Rozet had something to do with it. I mean to say that Mr. Rozet, as I recollect, assisted Mrs. Page in the negotiation.

Q. What did he do in the way of assistance?

A. I don't recollect the details of it.

Q. Can you recollect anything he did in the matter?

A. Well, I don't recollect the details; I don't recollect enough to state; I can't tell what it was. By Mr. Rozet's aid, Mrs. Page got about $1,600 more than she would otherwise have obtained. I don't recollect who delivered the deed.

Q. Didn't you do it?

A. I don't recollect. Mrs. Page received the money in payment.

Q. Where?

A. I testified then in regard to it, but I don't recollect very definitely now as I did then. I don't recollect the point so well as when I gave my testimony before.

Q. Have you any recollection at all when it was that the money was paid to Mrs. Page?

A. I think Mr. Hoyt gave me the money in checks to Mrs. Page's order, and I took it to her, but I don't recollect certainly. I don't recollect when Mr. Hoyt gave them to me. I don't recollect whether I gave him the deed when he gave me the checks; I suppose I did. I don't recollect whether Mr. Kerfoot had anything to do with that part of. I don't recollect who paid Mr. Kerfoot his commissions for making the sale. I think they were $300. My impression is, he received Mrs. Page's check for it, or deducted the money in some way from the amount paid by Mr. Hoyt.

Q. Did you pay it to him?

A. I don't recollect.

Q. You don't know how much was paid then?

A. I don't recollect.

Q. At the time you made this conveyance to——, were you solvent or insolvent?

A. We were perfectly solvent. I have no question about it.

Q. Mr. Page, what debts or liabilities did you pay after that time?

A. I can not tell you.

Q. Did you pay any debts after the first of January, 1875?

A. I can't locate any payments by that time, but I haven't any doubt that we paid some.

Q. Do you think of any debts that you paid, either individually or partnership debts that you paid subsequent to January 1, 1875?

A. There might have been a dozen of them, but I can't locate the time,

Q. Have you books that show the debts which were paid by you, or by your firm, subsequent to the first of January, 1875?

A. I don't know; I presume so. On general principles I should say, we paid a good many debts after that time; I have impressions in regard to it, as I can not fix that time. I presume I have ways of ascertaining; we have our books; I am more familiar with our books than any one else, I guess.

Examination of B. V. Page resumed on December 16, A. D. 1880, by Mr. Helm.

I have here a list of the liabilities that I paid of the individual debts, and the debts of Page & Sprague, after January 1, 1875. I have a list, as far as I could take them last night, amounting to about $80,000 principal, and about $27,000 to $30,000 interest, paid during those two years. There are more, probably, that are not on the book I was looking over last night. I have no means of separating the

individual liabilities from those of Page & Sprague on the bills payable book. Part of them were individual and part Page & Sprague.

The lists may not be absolutely correct, but I intended and believed them to be. I do not think all the liabilities so paid are shown on these lists. I do not know how much more. I do not recollect any debts, either individual or of Page & Sprague, paid after January, 1875, which are not included in those two schedules. I should not be likely to if there were many. Our assets under our control on January 1, 1875, and subsequent thereto, were appropriated, so far as I can recollect, to the payment of debts and improvement of property at the car works west of the city, and perhaps other things of the same nature we contined in the control of our property, from that time until the appointment of a receiver in this case. I recall no appropriation of our assets after January 1, 1875, until the appointment of a receiver, other than I have stated.

I have no reason to doubt that the schedule filed with my petition in bankrupty, filed January 21, 1878, containing lists of individual and co-partnership debts was correct.

By the schedule it appears that I am liable as guarantor to Alden Sampson, on certain notes of J. E. Young, and the Chicago, Danville & Vincennes Ry., amounting to $45,000 —that is correct.

Q. Were you liable on them from the time that Mr. Sampson received them?

A. I testified fully in regard to them, and I do not recollect the matter half so well as the testimony would show. I am liable on them to-day. Mr. Sampson has received no pay.

(Mr. Burry objects to going over this matter again.)

I negotiated them to Mr. Sampson. I do not remember whether I became liable at that time. My testimony given

before shows. I do not entirely recall the time. It is my impression I became liable at that time. He has my guarantee; it is my impression he received it at the time the negotiation was made.

Q. By your schedule you also schedule the following; and I will name each one of them, and you simply answer if they are correct: Northern National Bank of Hallowell, 1872, $5,000?

A. I don't recollect.

Q. Please refer to your schedule in bankrupty, which you have in your hands, and state what items, as I give them to you, are correct.

Objected to use of schedule in bankruptcy, it not being in evidence.

Q. The first, in 1872, is the Northern National Bank of Hallowell, $5,000.

A. It is on the schedule, and undoubtedly correct.

Q. The same year, another note to same bank, $5,000?

A. Correct, undoubtedly.

Q. 1873, another note to same bank, $3,750?

A. I presume it is correct. It is here on the schedule.

Q. 1873, Henry Sampson, $11,550?

A. Correct; still due.

Q. 1874, Scottish Mortgage Co., $18,000?

A. Loan on property, and they foreclosed on property, and have taken it. The property would pay. Owed that, 1874; contined to owe it till date of schedule. Never paid it but by the foreclosure.

Q. The National Bank of Illinois, $1,624.76?

A. I don't remember. Undoubtedly correct at the time of filing schedule. Don't know how it originated or when.

Q. Connecticut Mutual Life Insurance Company, $35,000?

A. We owed that debt on a mortgage at time of filing

schedule. I can't tell how long we owed it. It would be my recollection we owed it January 1, 1875.

Q. 1869, Charter Oak Life Insurance Company, $18,000?

A. That is a mortgage debt. I should judge it was correct.

Q. 1872, another one to the same company, $16,000?

A. Correct.

Q. 1873, Third National Bank of Chicago, $10,500?

A. I presume it is correct.

Q. Robert W. Wallace, $7,760?

A. I presume it is correct, I think we owed that debt the 18th of January, 1875.

Q. Third National Bank of Chicago, $5,119?

A. I presume it is correct. I presume we owned that on the 1st of January, 1875. It is stated here that the date is February 12, 1875.

Q. Was that a renewal?

A. I don't remember.

Q. Henry Root, $5,000; was that owed on January 1st, 1875?

A. I don't remember.

Q. William M. Derby, $5,000?

A. Did not owe that in 1875. It is stated May 13, 1876, as the date of owing it. It was a contract for furnishing 19 houses near the car works west of the city. We engaged with Derby and others to finish them and spent several thousands of dollars in doing that. That was the loss referred to.

Q. Ellis R. Benjamin, $1,085?

A. We didn't owe that in 1875?

Q. International Mutual Exchange and Investment Co., $4,098?

A. I judge we owed that January 1st, 1875.

Q. William J. Williams, $1,037? (Objected to by coun-

sel as immaterial and also to all other items asked of witness, not specified in bill.)

A. We did not owe that.

Q. You did owe Horace D. Moore $20,000?

A. We did not owe H. D. Moore one cent; H. D. Moore agreed with us to release our note from a certain mortgage he held if we would quit-claim certain property by the mortgage of $18,000 or $20,000; we deeded the property to Mr. Moore, as we had agreed; deeded while he was in Michigan: when he came back here we asked him to give up the notes as he agreed; he told me that there was about $100 of taxes that we had not paid, and on that account Mr. Helm had proposed to him (Moore) to commence suit for the whole amount of the notes, and divide whatever he might collect; and that he (Moore) had concluded not to fulfill his agreement with us; and we sent a notice of the summons served on us to Gen. Leake, and he never received the notice in the matter, and the first thing I knew a default was taken and a judgment entered.

Q. You did, on the 1st of January, 1875, owe him $20,000 on that debt, did you not?

A. I don't recollect when the former arrangement was entered into; I presume it was after January 1st, 1875, if we owed him at all.

Q. The debt originated in that year?

A. I don't recollect; it is the same debt, a part of which is included in the paper filed in this case.

Q. First National Bank of Monroe, Mich., $5,000?

A. We didn't owe that in 1875, I judge.

Q. As indorsers, the National Bank at Hallowell, $2,500; was that a renewal?

A. I think not; that debt we contracted in 1876.

Q. Simon Page, $4,750?

A. We didn't owe that on the 1st of January, 1875.

Q. Same party, $2,600?

A. We did owe that, I should judge from the schedule.

Q. An individual debt to the bank of Hallowell, $5,000?

A. I did not owe that the 1st of January, 1875. I don't know when we contracted that. The schedule says, November 27, 1877. I see the schedule says, renewed from time to time. I don't know when we contracted it.

Q. James Eddy, $16,000?

A. I don't know when we contracted that. It was a mortgage on property in the south part of the city. We bought that property prior to the panic of 1873. It is my recollection we owed it prior to January, 1875.

Q. The Phœnix Life Insurance Company, $9,000?

A, That was contracted in 1876.

Q. The Newton Theological Seminary, 1872, $5,000.

A. Mortgage on two houses contracted before 1875.

Q. International Mutual Exchange and Investment Co., $8,300?

A. Mr. William R. Page argued with me that if I would have an abstract of title made that would cost about $130, or hire them to make it, that he would take the property that was covered by that mortgac, and release it. I had the abstract made, and I paid for it.

I judge I owed that debt on the 1st of January, 1875.

Q. Commercial National Bank, $4,000; the whole of that, and upwards, was owing on the 1st of January, 1875, was it not?

A. I don't remember whether it was this particular amount. Mr. Eames, in 1876 and 1877, was in the habit of loaning me money. I don't remember about this.

Q. Are you satisfied as to whether you owed him $4,000 all the way back to 1875 or not?

A. I think we did.

Q. The Union Bank of Oshkosh, $4,434?

A. We didn't owe that in 1875.

Q. Were you a stockholder in the Fourth National Bank, January 1st, 1875, and if so, to what amount?

A. I don't recollect.

Q. Did you owe Simon Page, $661?

A. If the schedule says so, I did. I don't think that was due in 1875.

Q. Did you owe Eaton Cole $3,000?

Cross-examination of Benjamin V. Page by Mr. Miller.

Q. Was not the amount of cash paid Mr. Lewis on the residence up there at least as much as $10,000?

A. I stated that according to my recollection yesterday, that it was $5,000. I am quite sure as to that.

Q. [Counsel reads from answer of Belle F. Page, filed herein, that she purchased said premises for $55,000; that same was subject to incumbrance of $30,000, and of the remaining $25,000, house and lot on Erie and State streets were applied, and received by said Lewis, at $15,000, and the remainder thereof was paid by said Benjamin V. Page from money and property belonging to her.] The moneys referred to there, Mr. Page, must have been $10,000 in amount?

A. My recollection of it is, as I said at the time, that I was very uncertain. I don't remember with any degree of certainty. I can not tell any better now.

I don't recollect who kept the money after it was received. I don't recollect whether it came into my hands; don't recollect whether it was put upon my books; don't recollect who paid the money to Mr. Lewis; don't recollect how it was paid to him; don't reccollect whether Mrs. Page kept a bank account at that time; don't recollect whether she ever kept a bank account prior to the receipt of the money from Hoyt; I should have known it if she had. I did intend to say I didn't rocollect whether she did or not keep a bank account.

She received the property on North State and Erie from

Dunlap and Porter. I bought it for her out of my own money; I think that purchase from Dunlap and Porter was in 1864, about that time at any rate; I don't recollect who made the purchase. I don't recollect the details of the transaction at all. Don't recollect what the purchase-money was. I recollect I paid for the premises or they were paid for out of my moneys. It was a present made by me to Mrs. Page at Mr. Williams' suggestion. He said I was well off then and should make some provision for my wife; there was 75 feet. It was conveyed directly by Dunlap andPorter to Mrs. Page. I think Hoyt paid the back taxes on the Dearborn Ave. property when he made the purchase. I moved into the premises in 1869 or 1870. I have no recollection about who paid the taxes after the fire. I presume I paid the taxes after the fire; don't recollect how much, or about how much the annual taxes were. Don't reccollect how many years I paid the taxes. Don't rocollect whether more than one. I most always attended to the payment of taxes on my real estate myself. Don't recollect who paid the taxes on State and Erie street property. Don't recollect whether Mrs. Page had any other agent than me for the payment of taxes on her real estate; probably not. I don't know—I don't recollect whether she did or not. I should have known it if she had; don't now recollect. I presume Mrs. Page signed deed of portion of the Dearborn Ave. property, conveyed to Willing. The facts were, Page & Sprague borrowed the money of Willing and the Union Oil Co., I think, borrowed the money of Willing, and I gave him property as a collateral security on both; one indebtedness of $5,000, and the other of $3,000, originally. The money was borrowed at the time the conveyance was made. I have no recollection how the money was paid by Mr. Willing. It was a loan, probably paid in checks, and one check might have been made payable to Page & Sprague, and another made payable to the Union

Oil Co., for all I recollect. I presume I received the check. I made the arrangement with him, but I have no recollection of it now.

Another portion of the Dearborn Ave. property was sold to J. L. Peck before the sale to Hoyt. I don't recollect about what time that conveyance was made; the consideration was $250 a foot—35 feet, I think. Peck paid for that in cash. I think I negotiated that sale. I received the money from Peck. I don't recollect what became of the money; I presume some of those items of payments that I have brought in were made with it. I know it was applied to the indebtedness of myself or page & Sprague. The sale to Peck was since the fire. Don't recollect whether that sale was before the year 1875. I should not have supposed Peck would have taken it if Mrs. Page did not sign the deed; as a matter of fact, I don't recollect. He took a warranty deed for the property, and you can draw your own inference. About $7,000 of the Connecticut Mutual mortgage on Dearborn Ave. was paid before the sale to Hoyt. I don't know the exact amount. It was paid by an insurance policy that I held at the fire of 1871, on buildings destroyed on the property. My recollection is they held about $7,000, and there was besides that some $12,000 of good insurance that we received.

Q. Who received that?

A. I say "we."

Q. Page & Sprague?

A. And Mrs. Page and myself together. I don't recollect what was done with the money; I think it was very soon invested in building the new house. I don't recollect who received it from the insurance company. Mrs. Page did not. I don't know who receipted for it to the company. Don't remember who proved the loss. Don't remember what company it was in. Don't remember any of the companies. Don't remember the agent. We had

insurance in some 200 companies, more or less, an immense number of companies. I don't remember anything about the details of the payment of losses. Don't recollect in whose names the policies were taken out on the house. Don't recollect who effected the insurance. It was my impression it was some insurance that was made by Lewis and transferred. I don't recollect who insured the house after the fire. Mrs. Page never went to an insurance agent, undoubtedly. I have no recollection of it. There was, doubtless, insurance on the building; I have no recollection of going for it. Have no recollection of anything about who paid the premium. I don't recollect the proof of loss. I don't recollect whether I made the usual affidavits and proofs on the policies held by us at the fire, of the facts necessary to prove the loss. Have no definite recollection in regard to it at all. I have no recollection whatever of swearing myself as to the ownership of this Dearborn avenue property, in order to prove losses by the fire of 1871. I think I said I had an indistinct recollection how the receipt of $12,000 from the insurance company came to be made. Whatever the insurance was, whatever we received, undoubtedly came into my pocket, and was used in rebuilding the new house which was shortly rebuilt. I don't mean that particular package of money that was received from that insurance. I mean that particular money, in connection with other money, which was used in rebuilding the house.

I presume I paid the interest on the loan to the Connecticut Mutual on the Dearborn street property after the purchase from Lewis; I have an impression that when the property was purchased from Lewis, the two mortgages were both overdue, and when the payments of interest were made, Judge Skinner gave receipts; the coupons, whatever they had, were all taken off.

Cross-examination by Mr. LeMoyne.

I don't recollect whether there was any obligation to Lewis that I see to the payment to the Connecticut Mutual on his notes, or indemnify him when I bought the property; don't recollect giving any obligation; don't recollect whether there was a provision made in the deed for the assumption of that. Then the sale to Peck was made, the Connecticut Mutual released the portion bought without further payment; don't recollect giving the Connecticut Mutual any obligation for that debt in any form; I don't swear I did not; that's my impression that I did not; it's my impression that mortgage was overdue on those two lots at the time I bought; as a matter of fact I don't remember whether payment was made to the Connecticut Mutual afte the purchase by me from Lewis; I presume so. We had two or three loans of the Connecticut Mutual, and I recollect going and paying the money many times; I have no recollection which it was; if my private account on the books of Page & Sprague could be examined, I presume something might be found; there might be charges found to me of money furnished me; I had a separate bank account with the Mechanic's Bank for a long time; I would not be surprised if I had a separate account there for nearly the whole time up to 1873; I don't know whether payments were made from my private bank account, or from moneys of Page & Sprague; I don't recollect how many payments of taxes were made on that property; I don't recollect whether I paid any. I did not know of Mrs. Page ever making separate payments. I should have known it if she had made any. Mrs. Page never had any account on the books of Page & Sprague. I had a private book on which I had an account with her at one time; don't recollect at what time. Some time during the time we were referring to. I don't think I can produce that book. I don't know where it is. My impression of it would be that it was an account

kept from time to time, about the time the sale was made to Gregory, until the fire; and that the book was destroyed by the fire, and there has been no separate account kept since. There has been no account, either with Page & Sprague or with me individually on any books since the fire, of Mrs. Page's moneys and property. Don't recollect of ever making any statement to her, or any settlement with her of her business since the fire or previous. Don't know as I ever made one. Know of no such statement now that could be produced. We have had no written statements—settlements. We have had verbal settlements. I think she has had from me several times memoranda in regard to that. Don't recollect what they showed. They showed my indebtedness to her. Have an impression that several times I gave her memoranda in regard to the property; had pencil memoranda, generally. Not very recently. Don't know how many since the fire. Have an impression there has been more than one written since the fire. I can not say. I have an impression I made more than one. I can not state more definitely than that. I don't recollect when that was. Could not say whether within five years. Those memoranda showed the amount she had received from me.

If any money had been received by Page & Sprague from me, I would be credited with it. The books of Page & Sprague show the receipt of that money, from money loaned. It was credited to bills receivable. Credited as received on one of their own notes. As a matter of fact, I don't know how it was done. I don't think the books of Page & Sprague would show anything about the securities of Mrs. Page. I should judge the books of Page & Sprague did not ever show any credit to Mrs. Page. I don't know where the $12,000, received from insurance, which I expended, and afterwards repaid, was between the time it was collected and the time it was repaid. Very likely Page &

Sprague received it; they passed it over to me and gave me credit, and then charged me with it when I drew it. I have no knowledge of its going on the books of Page & Sprague as received from insurance. I can not tell how it went. But I know I had it. I have not the slightes idea how long I had it. I could not tell whether it was charged to me when I drew it for the new building; it might have been; when I received the money for the new building I did not make a note of where it came from. I recollect that I had it. I can not tell anything about whether it came from Page & Sprague; I did not pay them for the house from checks drawn—the transaction is that I received the money and paid them the balance. I don't think it is equal in amount. I don't know whether the books of Page & Sprague show whether the money was drawn from them to pay the interest on the Connecticut Mutual loan. The books would show the payment of that interest. I can not tell.

I was a stockholder in the Fourth National Bank; I don't recollect to what amount; I should say the Fourth National Bank failed in 1874 or 1875. It is my impression I was owner of $5,000 stock of that bank when it went down. I was not a stockholder in the Merchant, Farmers & Mechanics Bank. I was not sued as a stockholder. I was director in the Cook County Savings Bank, and it got hard up and the three other savings banks were very desirous to prevent a failure, and lent the Cook County Savings Bank money, and I was one of the makers of the paper given to the Farmers & Mechanics Bank and the Fidelity & State Savings. I don't know that I was liable to the Farmers Bank. I don't recollect how that was.

December 22, 1880.

Examinaton of B. V. Page continued.

From the books before me the payment of state, county,

town and park taxes on the Dearborn avenue property for 1872 seem to have been made by Page & Sprague, with other property, and charged to me in my account with them on the books of Page & Sprague. The amount of taxes paid that year on this property, as appears by the tax receipts, seems to be $9 60. The city taxes for 1873 on the same property seem to be $522, paid by Page & Sprague, and charged in the account of B. V. Page to me. The state, county, town and Park taxes for the year 1873 on the same property were paid in the same way, and charged in the same way on the books of Page & Sprague. I should judge, from the tax book, the city taxes for 1872 upon that property were paid by Page & Sprague, and charged to me; $330. I suppose, from what I have looked up, that Page & Sprague paid the taxes for 1871 on the same property. I gave this property to Mrs. Page, intending it should be hers. I presume I paid the taxes and interest as well as other household expenses. Whatever interest was paid to the Connecticut Mutual I presume was paid by me. I lived in the house and it is reasonable to suppose I should pay the taxes and interest. It might be considered rent. My family lived in the house and I paid my family expenses. My wife was a member of my family. I don't recollect whether or not, I, or Page & Sprague paid the taxes on the Dearborn avenue property for 1874, or for any subsequent year. I don't recollect as to the amount of taxes in arrear, at sale to Hoyt. Page & Sprague's receipts for 1874 do not appear on this book. I don't know where they are. You asked me the other day whether Mrs Page ever paid any taxes on the Dearborn Avenue property. I think I stated I didn't remember that she had done so. No different recollection now.

Q. I will direct your attention to four promissory notes of Samuel J. Walker, one dated September 1, 1873, for $7,800; one dated August 22, 1873, for $3,650; one August

2, 1873, for $7,800, and another September 2, 1873, for $5,000, scheduled by you among your assets in bankruptcy, and ask you to state when you received these notes, or when Page & Sprague received them, the notes being contained in the schedule of Benjamin V. Page, D. 2, F.(?) Objected to as incompetent.

A. It is a long time ago. I don't remember, but I presume they recived them at the date of the notes. I suppose check of H. H. Honore, also there scheduled to Wrenn & Brewster, dated September 1, 1873, for $5,000, was received about that time. I presume the Honore E. E. Childs & Towle notes on same schedule, were received at or about their dates.

Q. I will call your attention to the bankruptcy schedule of Page & Sprague's assets. State when Page & Sprague became the owners of notes of Joseph E. Young of $10,000; A. W. Doane, $400; two checks of Samuel J. Walker, $1,000 each; check I. N. Hardin, $3,700; notes Wm. Sturgis, $5,455 and $5,460; two notes Henry E. Pickett, $6,000 each; note Joseph Young, $9,438.75; checks of C. O. Ten Broecke; checks and notes of the Chicago, Danville & Vincennes, Railroad; note of Bryan Philpot, $6,083.33; note of H. H. Honore, $21,406.94; six checks of Honore; six notes of Honore; check of Bowen Bros.; and the other paper there scheduled as assets of Page & Sprague, as near as you can? (Objected to as immaterial, and because the schedules referred to are not in evidence.)

A. I do not remember anything about it. The most of them must have been received at or about their date.

The paper here referred to and produced to witness, is the bankruptcy schedule of Page & Sprague, filed in District Court or the United States, Northern District of Illinois, January 21, 1878, and particularly B 2, pages L., M. and N.

The signature of myself and William Sprague are at-

tached to the three pages of this schedule, on which is contained the paper about which I have been interrogated. I have no doubt this paper was turned over to the receiver, as stated in the schedule, but I do not recollect it. I can make the same reply as to the truth of the statement on the bankruptcy schedule of myself, as to the delivery to the receiver as to the other.

I cannot state any more definitely than I could the other day, as to whether the moneys received by me or by Page & Sprague, from insurance policies on the building on the Dearborn avenue property, was credited to me on books of Page & Sprague, or to Mrs. Page, or how credited. I have not examined the books. I have not had time to do so. I should be happy to turn over those books to any person for examination. I should say these books do not shew that the money was credited to Mrs. Page. Page & Sprague never had anything to do with Mrs. Page that I know of—never had any account with her that I remember. I did not make any charge against Mrs. Page for the taxes paid by Page & Sprague on the Dearborn avenue property and charged to me. I lived in the house, as I stated before, and it was perfectly reasonable, in my mind, that I should pay the interest and taxes as rental of the house.

I think I stated previously in regard to whether I charged to Mrs. Page any moneys expended by me or by Page & Sprague in rebuilding the house on the Dearborn avenue property. I don't recollect what I did state. The fact seems to me to be that you are questioning me and trying to make me contradict myself, and when I have answered the questions before, I dislike to do it again. My impression is you will find my statement in the testimony given the other day or given thee years ago. I do not like to state it again. I might state it a little differently, and I prefer to make the same statement I made before.

Cross-examination by Mr. Burry.

Q. You stated in your direct examination that back somewhere in 1865, you deeded property to Mrs. Page. State on whose suggestion, if any person's, you made that transfer.

Objected to, as immaterial.

A. I have already stated it was on the suggestion of Mr. Norman Williams; he was at that time my attorney.

Q. What do you consider you were worth at that time?

Objected to, unless the witness knows.

A. I had no debts at that time; I owed nothing at that time of any consequence; my assets were quite large at that time; I had considerable unemployed capital in the bank. I think I was worth $200,000.

At that time I bought 75 feet front from Mrs. Page for the purpose of making a home or homestead; it was a gift from me to her; the two houses I erected on that land covered 50 feet if I recollect correctly; they were erected soon after the purchase of the land; the vacant part of the land was sold soon afterwards, to James L. Stark; he gave for it, if I recollect correctly, some property on the west side; I think $6,000 or $7,000, perhaps $8,000—somewhere between $6,000 and $8,000 was afterwards realized from that property on the west side; one of the houses built on the homestead property was sold to Mrs. Gregory, I think for $13,000.

Q. About that time did you deliver to Mrs. Page the proceeds of this property got from Stark for the vacant lot and the proceeds of the house sold to Gregory, or did you hold it for her?

Objected to as leading.

A. I held for her, as I recollect it.

I continued to live in the house, corner of Erie and State streets, until I moved into the Dearborn avenue

house, bought from Lewis. At the time of the transfer from Lewis to me of the Dearborn avenue property, I was perfectly solvent. I don't remember who drew the paper from Lewis to me. The Dearborn avenue property ran to me. Mrs. Page must have signed the deed of the State and Erie property given in exchange for the Dearborn avenue property.

Q. Was Mrs. Page aware, at the time, of the negotiations which resulted in the exchange of the State and Erie streets property for the Dearborn avenue property?

Objected to.

A. She was.

Q. Did she give her consent to the exchange?

A. My recollection is that she largely made the negotiations; she consented, at any rate.

Q. Why was the deed of the Dearborn avenue property made to you instead of to her?

Objected to as not competent.

A. It was a mistake; it was not intended to be made to her, as I recollect it.

Q. Have you any idea of when she became aware that the deed was not made to her?

A. My recollection is that I had it always in mind to transfer the property back. It seemed easy to do it at any time, and my recollection is that I neglected it, and there was never anything spoken of between us in regard to it.

Q. At that time were you solvent?

A. Yes, sir.

Q. How long after this transfer of this property from Lewis to you of the Dearborn avenue property did you continue solvent?

Objected to.

A. I think we were perfectly solvent in January; that is my opinion.

I sold 35 feet of the Dearborn avenue property to Peck

and received the purchase money for it, and have never repaid it to Mrs. Page in any other way than by building the new house on Dearborn avenue; when I obtained money from Mrs. Page on her property, or from any other source and paid it into the firm of Page & Sprague, probably no entry was made on the books of that firm as to where I got the money; Page & Sprague didn't care or assume to know any of my private affairs; they acted, so to speak, as bankers for me; they paid my private debts with their check and charged it to me, and any money I handed in was placed to my credit; if any bills for building the new houses on Dearborn avenue were paid by Page & Sprague they would be charged to me; at that time taxes on all my property and on Mr. Sprague's were paid by Page & Sprague and charged to us respectively; I have never paid to Mrs. Page the money I received from Mr. Willing for part of this Dearborn avenue property.

At the time the Dearborn avenue property was burned certain insurance was collected, and I have never repaid to Mrs. Page that money in any other way than by applying it on the new Dearborn avenue house.

Q. Mr. Helm has examined you at length as to the debts of Page & Sprague; were those dsbts of yours and your firm mostly secured by real estate mortgages and otherwise?

A. As I recollect them they were, but I cannot tell you from memory entirely. The notes of Young and the Chicago, Danville & Vincennes Railroad Co., were secured amply as I thought at that time, and I have been told at the present time the property is likely to pay them; the $5,000 due the National Bank of Hallowell was secured.

Q. Were these debts you were questioned about by Mr. Helm, mostly secured with adequate security?

Objected to.

A. A very large proportion of them were.

Q. Were four-fifths secured with adequate security?

Objected to.

A. I can't tell you, but I could figure them up, and tell you.

Q. Figure them up.

Witness makes the computation.

Q. Have you figured up how much the debts you were examined about by Mr. Helm, amount to?

A. They amount to $260,000; of that amount $37,000 was unsecured, and about $224,000 was secured.

Q. Was the security at that time, as a general thing, on this $224,000 adequate?

Objected to.

A. I think so.

Cross-examination by Mr. Helm:

Q. I see in the book of bills payable July 21, 1873, a note discounted at the Bank of Hallowell for $5,000; was that the same which is the first referred to in your schedule as borrowed February 6, 1872, and renewed from time to time to the present date, October, 1877?

Objected to as not proper cross-examination.

A. Might have been and might not.

Q. I see in your schedule in bankruptcy a note to the Bank of Hallowell for money borrowed February 6, 1872, and renewed from time to time until the date of the schedule, October, 13, '77; is that a fact?

A. I have no doubt of it.

Q. Was that note renewed from time to time during the years 1873, and '74, and '75?

A. Undoubtedly. No question about it.

Q. A similar note for $5,000 with memorandum money borrowed June 4, 1872, and renewed from time to time until date of schedule. Was that note renewed during the years 1874, '75 and '76?

Schedule not being in evidence, all questions based on it are objected to.

A. Yes, sir, it was; they were all renewed from time to time, as stated in the schedule.

Q. Another statement of another sum of $3,750, borrowed about May 1, 1873, and renewed from time to time. Was that renewed and carried along during the several years?

A. If the schedule states so, there is no doubt about it. None of these debts are paid. They were scheduled in the bankruptcy schedule.

Q. Another note of August 26, 1873, at four months, McComan & Tabor, for $5,000, with a memorandum:

"Renewed $1,000, 90 days, and $4,000, four months." Was that note renewed as I have stated?

A. No doubt of it. It was not paid at maturity; it was not intended to be. It was to be renewed from time to time until we were ready to pay it, and it was paid long before the proceeding in bankruptcy.

Q. Another note on your bills payable for October 5, 1873, at 60 days; Drexel property, $7,760; Wallace renewed at $7,760, at 60 days. It was a secured debt. It was renewed at different times in 1874, '75, '76.

We were not, during the year 1874, having paper frequently coming due and renewed from time to time, without paying at maturity, except when the money was definitely loaned to us, as I recollect.

Q. Were you, during the year 1874, paying your mercantile and bank paper at maturity as the same matured?

A. As I recollect we were, except as we negotiated new loans.

Q. Do you mean as you negotiated renewals?

A. Yes sir; loans that were equivalent to renewals.

Q. Were you having frequent renewals of mercantile and bank paper during that year?

A. None of mercantile paper that I recollect. I do not recollect, but probably we were having extensions during that year. I can not state about 1874. We were carrying a large amount of property about that time and I do not recollect when it became a heavy load.

Q. Did you pay all your bills during the year 1874 at maturity?

A. I can not tell.

Q. Is it not your belief that you did not?

A. If we did not, it was a straight negotiation of a renewal, which was equivalent to a new loan, as I recollect.

Q. These debts you call secured, were they paid at maturity?

A. They were real estate loans, on which we paid interest. Probably they were not paid at maturity. Many of them are paid; some are not. I don't think the Commercial National Bank, during the year 1874, held over-due paper against Page & Sprague. My impression is, all the paper they held against us in 1874 is paid. There is an indebtedness of $4,000 due them, but I think it was contracted in 1875 or 1876. I see from the bills payable book I have before me, that the interest on the incumbrance on the Dearborn avenue property was at the rate of 8 per cent. per annum. In November, 1875, I paid $600, I presume the interest to that date. That is on $15,000 mortgage. On the mortgage of $7,990, December 1, 1875, I paid $319.60, which I presume paid it to that date.

Testimony of Wm. D. Kerfoot, a witness on behalf of the complainant.

Have a list of the assets received by me from Page & Sprague or Benj. V. Page. I knew Joseph E. Young, whose notes are listed here. I think he was insolvent in 1875. I could not testify as to the months of January and February, 1875. I don't know how he was in 1874.

I know Henry E. Pickett, whose notes are listed here. He was insolvent in 1874 and 1875. I know Bryan Philpot, whose note is listed here. He was insolvent in the year 1874 and the beginning of 1875.

Testimony of John L. Manning, a witness on behalf of the complainant.

Was acquainted with Joseph E. Young on the 1st of January, 1875, and prior thereto. Have known him as far back as January 1, 1874. From my acquaintance I regarded him as being insolvent during the entire year of 1874. I had business dealings with him and had paper against him. Had a judgment against him, and had a receiver appointed in December, 1874. I afterward took him through bankruptcy. I scheduled at the time I filed his petition in bankruptcy over a million and a half of dollars of liabilities; and to my recollection of the character of the liabilities, none of them were made after January 1, 1875; they were all prior to that time. I don't know whether any of them were made after January 1, 1874. My impression is they were not.

I was acquainted with Samuel J. Walker during the year 1874, and on the 1st of January, 1875. I regarded him as insolvent from what knowledge I had of his affairs. I had a judgment against him, entered January 20, 1875, or about that time. The amount of judgments against him up to January 20, 1875, in the various courts of Cook county, was something over $600,000, from a list I prepared myself, personally. Mr. Walker subsequently went into bankruptcy. The amount of judgment against him at the latest date I made inquiry, was in the neighborhood of $1,100,000. From my examination of the judgments entered against him, and also from knowledge of paper I had in my hands against him, I regarded him as being insolvent on the 1st of January, 1875, and for a year prior thereto, all the time. The judgments were rendered, most of them, I think, in

1874, the prior judgments, as I stated, being about $600,000. We expected, by filing a creditor's bill, to preserve a preference, and have a receiver appointed, which we did—filed a creditor's bill. All the indebtedness which I had charge of, notes and so forth, were given prior to that date, as near as I can remember.

I was slightly acquainted with H. H. Honore; I knew of several suits against him; we had a small amount of paper to collect against him, but were unable to realize anything on it; I don't remember the amount; it was about $8,000 or $10,000—probably $10,000. From inquiry I made in connection with Walker and Young's affairs, I regard him as insolvent and worthless during the year 1874 and on January 1, 1875; could collect nothing from him, and so stated to parties wishing me to take paper to collect against Honore; I told them I regarded him as insolvent, and would only agree to take their paper on condition I received regular fees; he subsequently went through bankruptcy; Walker scheduled liabilities in the neighborhood of four and a half or five millions.

Cross-examination.

I found a large number of the debts of Joseph E. Young, Samuel J. Walker and H. H. Honore that were secured by real estate; but on examination of titles or ascertaining the security, I learned that all the securities were worthless. I did not examine with reference to the Honore building or the Howland block. I examined more particularly with reference to property in the southwestern part of the city; what is known as Walker's Subdivision.

I cannot say whether the notes introduced in evidence which were put up by Young, Walker and Honore as collaterals, or otherwise, and which were in the hands of Page & Sprague, were secured by worthless security, unless I know whether they were third or second mortgages. I am not

willing to swear that there has not been a surplus obtained on several of those mortgages made by those parties on notes mentioned in this case, as late as 1877. I don't know anything about the circumstances regarding those particular notes. I base his insolvency on what I know of his affairs. I know he was largely indebted on judgments and on those mortgages that I learned he had given as second and third mortgages. I would not swear, because I do not know, that there was not a surplus returned to Page & Sprague of over $2,000 as late as 1877, on one of these securities.

By MR. HELM, examined.

I foreclosed two trust deeds against Joseph E. Young to the amount of $410,000. The property brought, I think, in the neighborhood of $600. There were previous incumbrances on the property. That embraces 42 acres of land in Walker's Third Dock Addition.

Q. Is that a sample of Walker's title, so far as you have been able to learn?

Objected to

A. It is. I had several other pieces to examine in that neighborhood and never did find a case down to bed-rock yet—generally found some thing on it before.

By MR. BURRY.

I could not say that the mortgages I mentioned were scheduled, or ever brought in controversy in this suit. I never examined with reference to that. I never happened to examine any of the good mortgages.

By MR. HELM:

I regarded the Chicago, Danville & Vincennes Railroad as insolvent from and after December 1, 1873. I only know through paper which was in my hands in 1874, given by the Chicago, Danville & Vincennes Railroad, by Joseph E. Young, manager, from the fact none of the paper could be

collected. I understand a receiver was appointed afterward by the United States court.

By MR. BURRY:

I was at that time in partnership with Mr. Helm.

Examination of Mrs. Belle F. Page, a defendant, taken on December 31, 1880, under order of December 29, 1880.

Messrs. Isham & Lincoln, as solicitors for Mrs. Page, are willing that she should be called by any party as a witness in this cause, and should be examined as a witness, protest against any *ex parte* examination of her, for the reason that such examination is not lawful at this stage of the cause, and for the further reason that no proper object of such examination exists at this stage of the cause.

Examined by Mr. Helm.

My name is Belle F. Page; am defendant; am wife of Benj. V. Page; married April 14, 1859. Have never been engaged in business on my own account.

Q. What property, if any, had you when you were married?

Objected to as not a proper subject for examination.

A. None.

Q. What property has Mr. Page given you at any time, or caused to be conveyed to you since your marriage?

A. The property on the corner of Erie and State streets.

Q. Any other property that you remember?

A. Yes, sir; there has been other property.

MR. ISHAM: We object to all these questions.

I can not state what other property he has given or caused to be conveyed to me. I don't remember any other real estate he has at any time given to me. I think there were three lots at corner of Erie and State streets; I am not positive.

MR. ISHAM: We wish to enter a general objection to all

questions that do not relate to property which it is sought to have passed into the hands of the receiver.

There were two houses. We occupied one and sold one to Mr. Gregory. The other lot was a vacaut lot. Sold to Mr. Gregory in 1864 or 5. I don't remember the exact amonnt received from Mr. Gregory for that property. I can't remember whether it was received in money or property. I don't remember whether that property was subject to any incumbrance at time of sale to Gregory. Sold the vacant lot to James L. Stark. Sold the house occupied by myself to William G. Lewis, in exchange for other property. Don't remember the price or value put on house sold to Lewis. Don't remember price put on house sold to Gregory. Don't remember price put on house sold to Stark. Received from Stark property in exchange. I don't remember exact location of that property; it was on the West side. It was unimproved, I think. I saw the property received from Stark. I want to look at it before it was exchanged. I don't remember the number of lots; it was more than one. Don't remember what I did with those lots, or either one of them. I hold some property on Lincoln avenue; a block of houses. I don't know how many houses. I don't know the size of the ground. I received the conveyance from Mrs. Maxwell. I hold them as security for $5,000, money loaned by me to Mr. Page. Chas. H. Mulliken has received the rents. He uses them for the benefit of the property, for taxes, insurance and repairs. I received $200 from those rents this summer. I also received a small sum when it first came into my hands, but don't remember the amount.

I received no rent from the Erie street property while I was holder of it. The house sold to Gregory was built by Mr. Page. As soon as completed we occupied the other house, from its completion until it was sold to Lewis. I held the Erie street property six years. Mr. Page paid the

taxes on those three lots during all the time it was held by me. The property on Dearborn avenue and Maple street was received in exchange for the Erie street property on which we lived. There was only one house on that; size of that piece of property was 150 feet. Received from Wm. G. Lewis. There were house and stable on it. I afterward erected buildings on it. I don't remember what was the cost of those buildings; one house and stable. I sold it to Wm. M. Hoyt. He assumed the mortgage and gave me $15,900 in cash. I don't remember how much the mortgage was on that property. It was more than $5,000; think it was $25,000. It was assumed when the house was bought of Mr. Lewis. I received $15,900 in one check. I gave $7,400 to the Maxwell estate, $5,000 to release Mr. Page an indebtedness to Mrs. Maxwell, and $2,600 to the Union Oil Company, and $900 I deposited; the Union Oil Company was a business company in which Mr. Page was concerned; the amount I paid to Mrs. Maxwell was money borrowed, a debt of Mr. Page's; the $7,400 given to the Maxwell estate, Mr. Page was trustee, and the money he had used, and I replaced it; all that I retained out of that $15,900 was $900

Q. Then it was a debt of his?

A. No.

Q. This $7,400 you say you gave to the Maxwell estate?

A. Yes, sir.

Q. And he was a trustee of that estate?

A. Yes, sir.

Q. Was he indebted to the estate?

A. Yes, sir.

Q. This, then, went to pay a debt of his; is that correct?

A. Yes, sir.

Q. $5,000 went to pay the debt he owed to Mrs. Maxwell; is that correct?

A. Yes, sir. At that time I took a mortgage from Mrs. Maxwell to secure the $5,000 to me; she gave me a deed —conveyed the property to me; I don't remember how the $5,000 to Mrs. Maxwell was paid, or to whom it was paid; my husband did the business; I did not see Mrs. Maxwell in regard to it; did not give her the money or receive the papers from her; did not negotiate with her or have any conference about it; with reference to the money advanced the Union Oil Co., I had personal dealings with a member of that Co., with Mr. Page, who was a member of that Co. I advanced it to him for the use of that Co. I drew a check for that money. I don't remember whether I signed the check. I kept the moneys deposited at the First National Bank in my name. I always signed the checks myself. I don't remember whether I gave my husband a check on the First National Bank for $2,600. I remember the fact that $2,600 was advanced to the Union Oil Co. I took the note of the Union Oil Co. for $2,600; the note signed by the Union Oil Co., by B. V. Page, President.

Objected to.

Q. Where is that note?

A. At my home. The $7,400 paid the Maxwell estate, was $5,000 South Park bonds, and $2,400 notes, I think. I bought those bonds with the money from the sale of the house. I don't recollect how long I held those bonds. I don't reccollect whether I ever received any interest on them. I don't think I did. $2,400 was in notes. I can't remember the names now, whose notes they were. Mr. Page got the notes for me. They were notes bought for the purpose of keeping the money drawing interest. I gave this amount to Mr. Page as trustee.

I never kept any account or memorandum of my financial dealings with my husband or these various persons. I kept no memorandum relating to rents, nor any relating to

taxes, nor any relating to any business affairs. I do not know whether my husband kept any such. I think he showed to me an account between myself and his business affairs; we talked it over. I don't remember whether he ever showed any statement or account of rents; don't remember whether he ever showed any accunt showing taxes paid on the property on the West Side, or the Erie street property, or the property sold Hoyt, or the property Mr. Mulliken has charge of. I don't remember that any one has shown me any memorandum of those accounts of rents and taxes. Mr. Mulliken has not given me a report or account of his management of property.

Cross-examination by Mr. Burry.

The property at the corner of Erie street and State street, given me in 1864, was given me by my husband for a homestead. I have had conversations with my husband at different times in regard to my separate property, and in these conversations this State and Erie street property, or its proceeds, has always been considered as my homestead. My husband's financial condition in 1864 was good. I believe Mr. Norman Williams suggested that this homestead property should be settled on me at that time. Mr. Page put up two houses on it; in one of them I live as my homestead, the other I sold to Charles Gregory with the lot on which it was situated; I don't remember what Gregory agreed to pay for it. I don't remember the exact amount; I don't remember that there was a $5,000 mortgage on it, which he assumed to pay; for the vacant lot, I got some North side property from Mr. Stark. I don't remember how long I held it, nor what it brought me when disposed of, but certainly knew at the time and talked with my husband about selling it, and he and I calculated how much would come to me; we were anxious to buy a homestead or a suitable home; we were not satisfied with the one on Erie street

and wished a better one: and for that purpose I was keeping track of the proceeds of the rest of the property, and got statements from my husband in regard to it.

When the property on Dearborn and Maple streets was sold, Hoyt paid for it by a check payable to my order; I indorsed it; I must have done so.

I advanced about $2,600 to the Union Oil Co., and got three notes for it, aggregating about $3,000; they have not been paid yet; I have been paid interest on them ten per cent. every month.

I got the deed of that property from Mrs. Maxwell, and paid $5,000 for it; I invested that $5,000 in Lincoln avenue property, because Page told me it was a good investment for my money; I paid off Mrs. Maxwell, and took a deed for it, in order to have a mortgage investment there; I paid $2,600 to the Union Oil Co. by its president.

Q. Do you remember about how long after you sold the house to Mr. Hoyt, before you made good a certain deficiency in the Maxwell estate?

A. Directly after, I think.

Q. Should you think within a month?

A. Within a month or two.

Q. You put the money, however, at first in South Park bonds?

A. Yes, sir.

Q. But you did not hold those a month, I think?

A. I think not; I am not positive.

Mr. Mulliken paid some rents on the Lincoln avenue property to my husband, and he used them for insurance and repairs at the time. I understood all the money received from Mr. Mulliken was applied on the property, and I think it was; a conveyance of part of the Dearborn avenue property was made to secure money loaned from Mr. Willing to Mr. Page, at the time of making the mortgage.

In the Erie street property negotiations with Mr. Gregory, I did the negotiating; I am acquainted with Mr. Gregory and made the negotiations myself to sell him the property.

Q. Do you remember at the time of the sale of this Erie street property that any objection was made by any party to the sale?

A. Yes, sir.

Q. By whom?

A. By myself.

Q. For what reason? Did you wish to retain your homestead intact?

A. Yes, sir.

Q. Was it finally sold with the intention that the money should remain in you to be invested in a new homestead?

A. Yes, sir.

Q. Was it so treated between you and Mr. Page?

A. Yes, sir.

Q. When you made up your accounts between you of the property?

A. Yes, sir.

Q. You then held any property that you received, for the benefit of any new homestead that you might buy?

A. Yes, sir.

Re-direct Examination of Belle F. Page by Mr. Helm.

I sold the Erie street property for the purpose of getting a better home; and for the same reason I bought the Hoyt property.

Q. For what reason did you sell the Hoyt property?

A. Because I wanted to assist Mr. Page with money. There was more money invested there than we could spare.

Q. For what reason was he in need of assistance?

A. Because he was very much embarrassed in his affairs.

Q. In what year was that?

A. October, 1877, I think.

Q. How long had you known of his embarrassment?

A. Ever since the panic; I don't remember what year that was.

Q. It was a fact he was very much embarrassed ever since the panic?

A. Yes, sir.

Q. That embarrassed a good many of us?

A. Yes, sir. A large house was a very uncomfortable thing to own then.

Q. Do you know the amount of his liabilities in 1877?

A. I do not.

Q. What was the amount of his liabilities that you knew of, after the panic?

A. I do not know.

Q. How much of a load was he carrying that embarrassed him?

A. I do not know.

Q. Did you know from him at that time?

A. That he was embarrassed?

Q. Yes.

A. Yes.

Q. Did he talk over his matters at home?

A. It was always his habit.

Q. Always gave you to understand pretty much the extent of his burdens?

A. Yes, sir.

Q. Did you know he was in debt $200,000?

A. I did not know the amount. He did not talk about the amount. I did not know anything about it.

Q. Did his embarrassment, resulting from this load of

hard times and liabilities, continue continuously from the time of the panic down until you made the sale?

A. Yes, sir.

Q. Did that relieve him?

A. Yes, sir, somewhat. I don't remember just the date of the panic spoken of. About two years after the fire. I paid this $5,000 on the Maxwell property for the purpose of making an investment. I was led to suppose that was a good investment.

Q. Did you get a good title, as you understood it?

A. Yes, sir, I suppose so. I don't suppose my husband would advise me to invest my money without.

Q. Was there any previous incumbrance on the property?

A. I don't know.

Q. There was nothing you knew of, anyway?

A. I don't remember.

Q. You executed this mortgage to Mr. Willing for the purpose of securing a debt of your husband?

A. Yes, sir.

Q. For the purpose of helping him in his business affairs?

A. Yes, sir.

Q. I suppose from the first to the last you allowed him to handle and use this property in any way to assist him in his business affairs?

Objected to.

Q. You allowed your husband to handle that property in any way that suited his business plans and necessities, did you not?

A. You mean I have done so?

Q. Yes, from first to last?

Objected to.

Q. You allowed your husband to handle that property

in any way that suited his business plans and necessities, did you not?

A. No, I don't think I did.

Q. Were you willing to convey this property, or any part of it, to assist him in raising money or assist him in securing his debts if he asked you to?

A. If it was perfectly safe.

Q. Were you not in any other case?

A. I was glad to assist him.

Q. Were you unwilling to do it if it were not safe?

A. I was anxious to assist my husband.

Q. Were you unwilling to do it if it were not safe?

A. That is the answer.

Q. Were you only willing to mortgage your property or sell it for the purpose of assisting him to the extent you saw you were safe in so doing?

A. I was anxious to assist him any way.

Q. When you executed the mortgage to Mr. Willing, did you regard yourself as entirely secured?

A. Yes, sir.

Q. What security had you against that mortgage?

A. I don't remember.

Q. Have you any security against the mortgage which you gave to secure Mr. Page's debt to Mr. Willing?

A. I do not hold anything.

Q. That was upon a piece of property which you held as your property, was it not?

A. Yes, sir.

Q. And you gave it, as you say, for the purpose of securing your husband's debt, and have you any security against that?

A. No, sir; not that I know of. The money was borrowed from Mr. Willing at the time the property was conveyed to him in security.

Cross-examination resumed.

The first year after the fire, in 1871, I spent in Riverside; I think we lived the next two years at the corner of State and Division streets. The Dearborn street house was built in 1873 and finished in 1874. I think we occupied it in the autumn of 1874. Mr. Page was not embarrassed while he was building that house; I don't remember hearing him say he was embarrassed before 1875 or 1876.

Q. Can you swear you ever had any of these conversations about embarrassments before 1877?

A. I can not swear anything about it.

Q. You merely have a recollection you had some talks with him about embarrassment?

A. Yes, sir.

Q. And can not say when?

A. I can not say when.

Q. You were willing, were you not, to have your husband have money sometimes, when it was not safe?

A. Yes, sir.

Testimony of Horace D. Moore, complainant in cross-bill in this case:

Am a creditor of Benjamin V. Page and William Sprague. They owed me those notes October 12, 1872; three notes for $6,000 each, dated October 12, 1872; one payable in one year after date; one in two years after date; and one in three years after date; offered in evidence and identified by witness. They were given for a loan of money, secured by trust deed on land; the loan was made through Mr. Eames, President of the Commercial National Bank; I think the indorsements on the notes show correctly the payments, and all payments made upon them; they have never paid me anyway the full amount of those notes; judgment was rendered in my favor for the balance. (Objected to). Nothing has been paid on that judgment; they reduced the debt by payments and by the sale of the land

down to $14,000; the land sold for about $5,000; after that it left $14,000; the judgment was recovered after the sale of the land; nothing whatever has been paid to me on the judgment.

There was then offered in evidence and objected to, an execution issued from the Superior Court of Cook county, in favor of Horace D. Moore against Benjamin V. Page and William Sprague, dated September 14, 1877, on a judgment recovered September 5, 1877. Amount of damages recovered, $14,000, execution issued for $14,007.50. Returned on the 12th day of December, 1877, by the sheriff of Cook county, no property found, and no part satisfied.

Objected to by Mr. Burry.

There was also offered in evidence and objected to, a trust deed of Benjamin V. Page and others to J. Young Scammon, securing the notes offered in evidence, with Mr. Scammon's indorsement as trustee of the sale of the property and the amount realized.

Objected to by Mr. Burry.

Testimony of H. F. Eames, a witness on behalf of Mrs. Page.

I know Horace D. Moore and B. V. Page. I knew Horace D. Moore in 1872, and since. I remember of Horace D. Moore holding the three notes for $6,000, which were formerly secured by a trust deed on property in southwestern part of the city—the notes being signed by Page & Sprague. He held those three notes of $6,000 each, made in October, 1872, payable in one, two and three years, secured by trust deed upon about fifty acres of land southwest of city limits. Mr. Moore was here either in the fall or spring of 1877, and saw Mr. Page in regard to a settlement of this claim. I saw him at that time. I learned from Mr. Moore what negotiations were being carried on regarding the settlement of of this property. I think that Page & Sprague had made a

quit-claim deed of this property to Moore at that time, or about that time. Mr. Moore was here, and said he would accept of this property and give up their notes, provided they would pay the taxes. There were some past due taxes upon this property. This was the property by which the notes were secured. I learned this from Mr. Moore, and that they had made a quit-claim deed of the property to him.

Testimony of William Sprague, a witness on behalf of Mrs. Page, taken January 24, 1881:

I was a member in 1864 and 1866 of the firm of Lewis Page & Co. The members of the firm were William J Lewis, B. V. Page and myself. I knew pretty nearly what B. V. Page's financial condition was in 1864 and 1866. In 1866 Mr Page and myself sold out our interest in the firm to Mr. Lewis and others, and they paid us $210,000 in cash and assumed all the liabilities of the old firm. Mr. Page's share of that $210,000 was over $150,000. Besides, at that time he had other property and no debts. Independent of the firm assets he had considerable property. I remember Mr. Page living on some property at the corner of Erie and State streets. I think Mr. Page bought it from Mr. Dunlop and gave it to his wife, built some houses on it and lived in the corner one. I understood at the time that it was the understanding, Mr. Page was buying it as a homestead for his wife. It was a generally understood fact. The firm didn't have quite as much assets in 1864 as in 1866, but it was in just as good condition. It had very large means in 1864.

Mr. Page's interest was probably worth $20,000 less in 1864 than in 1866. I cannot tell definitely, only I know in 1864, as in 1866, we had more money than we required to do our business with, and we had plenty of it.

Testimony of Norman Williams, a witness on behalf of Mrs. Belle F. Page.

I know B. V. Page and Mrs. Belle F. Page. Have known Mrs. Page from childhood, and Mr. Page since 1858. I remember a transfer of property situated on the southeast corner of Erie street and North State street, in Chicago, to Mrs. Page in 1864. I was Mr. Page's attorney at that time. I was intimately acquainted with Mr. Page's business and financial condition, and my opinion is that, at that time, he was worth in the neighborhood of $300,000. The purchase of the Erie street property for Mrs. Page was made at my suggestion and on my advice. I was the attorney not only of Mr. Page, but also of the firm of Lewis, Page & Co., composed of William G. Lewis, Mr. Page and William Sprague, and as their financial condition was then prosperous, and each of the members were wealthy, I suggested to each that they should settle upon their wives a homestead—or some real estate, and upon this suggestion and advice, property was purchased and conveyed to Mrs. Page. This suggestion was also adopted by Mr. Sprague. My present impression is I examined the title and drew the deed. I had been the attorney of the firm and for Mr. Page from 1859 to 1866. I was not only their attorney but confidential adviser, and they conferred with me freely upon their business and private transactions, and I was necessarily acquainted with their affairs. I think they were the leading merchants in their line of business in this city during the period I have named. It was understood and designed at that time between Mr. and Mrs. Page and myself that this property so deeded to her was to be her separate property and homestead. I know of no liabilities of Mr. Page in 1864 except current liabilities which are incident to any business house. I remember of the acquirement by the Pages of the property on Dearborn avenue and Maple street from Lewis, but I was not their attorney at the time and had nothing to do with the transfer.

I was informed by Mr. and Mrs. Page that they had exchanged the Erie street property on which the houses were constructed for a residence on Dearborn avenue, and that this residence property was to be the separate property of Mrs. Page, for her homestead, and until the commencement of this suit I supposed the title to stand in her name. I can not state the exact time I obtained this information from them, but it was about the time the exchange was made. I supposed this property was Mrs. Page's separate property and homestead. I never heard it questioned.

Testimony of William M. Hoyt, a witness called on behalf of defendant, Mrs. Belle F. Page, June 15, 1882.

Direct Examination.

I am a wholesale grocer in the city of Chicago, and reside at 320 Dearborn avenue, at the corner of Maple street and Dearborn avenue, on property formerly purchased by the Pages.

Q. Please detail the negotiations that took place when you bought that property at the corner of Maple street and Dearborn avenue.

Objected to, as immaterial.

A. I bought it, for the sum of $45,000, of Mrs. Page, in September, 1877, through W. D. Kerfoot.

Q. Which property do you understand that to be?

Objected to, as immaterial.

A. I bought it of Mrs. B. F. Page for $45,000. I paid off the incumbrance due the Connecticut Mutual for a little over $29,000, and paid the balance in cash by means of this check here on the Union National Bank (exhibiting check) No. 7,011, to Belle F. Page, and I will produce this check to be attached to my deposition, as exhibit A.

The check was thereupon offered in evidence, and is:

No. 7,011. CHICAGO, Oct. 3, 1877.

UNION NATIONAL BANK
of Chicago.

Pay to the order of Belle F. Page,

Fifteen thousand nine hundred forty and $\frac{64}{100}$ dollars.

$15,940.64.

W. M. HOYT & Co.

(The check is certified as follows:)

Certified Oct. 4, 1877, for $15,940.64. Union National Bank, Odell, Teller.

(The check is endorsed as follows:)

BELLE F. PAGE.
BENJ. V. PAGE.

Witness. My account with the Union National Bank was charged with that sum.

Q. Do you remember at whose request you made that check payable to the order of Belle F. Page?

A. No, I bought the property knowing it was Mrs. Page's, the abstract showed it, and of course the check ran to her; I don't know there was any request.

Q. Would you have been willing to have paid cash or a check to anyone else?

Objected to.

A. No, sir, I would pay it to the party I bought from, of course.

Cross-examination by Mr. Miller.

Q. Do you know on what terms Mrs. Page held that property.

A. I don't know; all I went by was the abstract, and that was examined by Mr. Grinnell; when he passed on it, all I had to do was to pay off the incumbrance and give a check for the difference.

Q. You say you had negotiations with W. D. Kerfoot?

A. As a broker.

Q. Did you ever see Mrs. Page personally in regard to the transaction?

A. Yes, sir.

Q. When?

A. About the time in September I was negotiating for it.

Q. Whom did you first see?

A. I think Mr. Kerfoot; I would not say for certain; he was the one who told me the property was for sale.

I saw B. V. Page at the time these negotiations were pending; I think he brought an abstract and attended to some of the details.

Q. Details of fixing the price?

A. I don't know how far that went; I did it principally with Mr. Kerfoot—my negotiations—and then I was there and talked with Mrs. Page about the price and made a bargain for fixtures; I think some gas fixtures.

Q. You made that bargain with her?

A. Yes, sir. I guess Mr. Page was there at the time, both were present. I think they consulted together.

Q. To whom did you hand that check?

A. I don't know; I think I gave these papers to Mr. Grinnell; at any rate, he was with me and passed on them, fixing up the incumbrance.

Q. Did you know Mrs. Page owned the property except from what appeared on the abstract?

A. That was all I went by; the attorney, Mr. Grinnell, passed on the abstract; and I bought it without knowing there was any question about it or anything else; it was pronounced all right and I paid for it according to its terms.

Q. As between Mr. and Mrs. Page, except what appeared on the abstract, you do not know?

A. No, sir; I had no intimation about it.

Q. Were any of these negotiations as to the amount you were to pay made by Mr. Page?

A. I think they were generally together while I was negotiating. I know I tried to buy it for less one time, and Mr. Page said she would not sell it for less, and then I afterwards saw her and fixed it up.

Q. Did you say Mr. Page paid the taxes?

A. He assisted, brought in some papers, I think, and brought in the abstract and had some tax receipts; he was in once or twice and attended to some of the duties that somebody had to do.

Q. These taxes that you refer to were taxes that were paid by the Pages?

A. He had to pay the taxes that were due; I say he, but I mean the estate.

Q. Do you know whether Page paid it personally?

A. I don't know; I think first the attorney told me of a discrepancy; that the taxes of so and so were not paid, and that they must be paid to straighten out the abstract, I think Mr. Page attended to it personally, but that I don't know; I think he brought me the evidence that they were paid; if he didn't, Mr. Kerfoot did; it was a matter that had to be atteneed to, and was attended to.

Q. You think you didn't pass over this check to the Pages?

A I can't tell who took that personally, whether it was done by my attorney or Mr. Kerfoot; or who it was.

Q. Can you state whether you personally gave that check to Mrs. Page or not?

A. No, I don't think I did, because it was down town; I was not at the house; the check was made to conform with this difference; we took out a certain amount of taxes that could not be paid at that time; I took out the encumbrance of the Connecticut Mutual and gave the check for the difference. This was paid as the balance due. Whether I attended to it, or my attorney, or Mr. Kerfoot, or who, I don't know.

Re-direct Examination.

Q. In these negotiations you had with Mr. Page, did he at any time tell you that he owned this property?

A. No, sir.

Q. Did he at any time tell you it was Mrs. Page's property?

Objected to.

A. Certainly he told me, and I knew it from the abstract; this thing is all based on the abstract. There was never a question raised when I bought the property but what it was all straight.

Q. And belonging to?

A. Belonging to Mrs. Page; the record is all clear. Mr. Grinnell was my attorney at that time, and he passed on it and said it was all right,

Q. You say Mr. Kerfoot first told you the property was for sale?

A. Yes, sir.

Q. Did he at that time tell you what it could be got for?

A. He told me about what it could be got for.

The testimony of William G. Lewis, a witness called on behalf of defendant, Belle F. Page, on June 15, 1882.

Examination by Mr. Burry.

I am employed in the Custom House and reside at Hyde Park; I have lived in Chicago or its vicinity since 1857; I was a partner of Benjamin V. Page, from 1857 to 1858; the firm was first Lewis & Page, and afterwards Lewis, Page & Co., and was dissolved in 1868; I was such partner during 1864; at the time of the dissolution of the firm the debts were about $24,000; that is all the firm owed, just current debts for the month; we had no notes; at the time of the dissolution of the firm the surplus was $330,000; I bought

out Page and Sprague; I don't remember exactly how much went to Page; it was in the neighborhood of $200,000.

Q. Please state the financial condition of the members of that firm as to having ready money on hand or not, say from 1862 to 1866.

A. We always had a surplus all the time.

Q. Do you know what B. V. Page's pecuniary circumstances were at that time, and on to the dissolution of the firm?

A. About equal with mine, about the same.

Q. How much do you suppose he was worth in 1864 or 1866?

A. $120,000 or $130,000 in 1864; I should think about $120,000 in 1864.

Q. Did he have individual property outside of the firm?

A. Yes, sir, and I think the above estimate includes it as near as I can give it.

Q. After the dissolution of the firm was that increased?

A. At the dissolution of the firm his proportion must have been about $175,000.

The business was carried on after the dissolution of that firm in two different parts; my business was continued as Lewis, Ham & Co.; the other firm was Page & Sprague.

Along from 1864 to 1866, we had a surplus; I know we had $40,000 at that time in bank, which we had no use for in our business, and which we invested in 5–20 government bonds.

My relations personally with Page were intimate; we have always been intimate; we came out here together; I don't think at that time he owed a dollar; I am very certain he did not.

Q. Do you know anything about Mr. Page purchasing any property at the corner of Erie and North State street?

A. Yes, sir.

Q. Do you remember about how much he purchased there?

A. Three lots.

Q. Do you remember how much he gave for it?

A. No, I don't recollect.

Q. Do you remember for what purpose it was bought, for whom?

Objected to.

A. For Mrs. Page.

Q. How did you learn that?

A. I knew it at the time. I knew about the negotiations, I think the idea was to build there eventually and that was to be his home, and it was bought for her.

Q. You once lived on the property on the corner of Maple and Dearborn avenue now occupied by Mr. Hoyt, and formerly occupied by the Pages?

A. Yes, sir.

Q. Whom did you sell that to?

Objected to.

A. I sold that to Mrs. Page.

Q. Do you remember when?

A. I can not tell you when.

Q. After the fire?

A. Before the fire.

Q. Long?

A. No, I lived there six months.

Q. What did you get from Mr. Page for the house?

A. I think it was $55,000.

Q. All cash?

A. No; I took a lot on the corner of Erie and State streets.

Q. Paying how much, do you remember?

A. I think it was $20,000.

Q. Was there any incumbrance on the Maple street property?

A. Yes, sir.

Q. How much?

A. $3,000.

Q. Was that considered a part of the purchase money?

A. Yes, sir.

Q. How did you get the balance; how was it paid?

A. In money.

Q. With whom did you have the negotiations leading up to the sale for Mrs. Page?

A. With Page and his wife both; no one else, I think; no real estate man.

Q. Was there any question raised during the negotiations as to whether you were selling the house to Mr. or Mrs. Page?

Objected to.

A. No, sir.

Q. Do you remember to whom the deed actually ran that you signed of the house?

A. I always supposed it ran to Mrs. Page, until this case came up two or three years ago. I had no idea it did not and I don't understand now how it was.

Q. Was that the general understanding in regard to the matter?

Objected to.

A. Yes, sir.

Cross-examination by Mr. Miller.

Q. You must have known at the time you signed the deed to whom it ran?

A. I supposed it was Mrs. Page.

Q. When you signed the deed you must have seen to whom it ran?

A. I don't recollect anything about that now.

Q. Would you be apt to sign a deed without seeing to whom it ran, for a piece of property worth $55,000?

A. Would not be likely to.

Q. You say that the negotiation that led up to the purchase of this house from you was conducted both by Mr. and Mrs. Page?

A. Yes, sir; both of them together.

Q. Was Mr. Page then your partner?

A. No, sir; we had dissolved some time before that.

Q. Where were the negotiations had?

A. At my house and at their house.

Q. Were your families accustomed to visit?

A. Yes, sir.

Q. The negotiations were on visits of that kind—calls on Mr. and Mrs. Page?

A. We came up on purpose in regard to the property.

Q. Who first spoke to you about it?

A. I can not recollect that now; my impression is that Mr. Page did.

Q. Then afterwards he brought up his wife and looked at the house.

A. She had seen the house frequently.

Q. Who paid the balance that was paid you in cash?

A. I don't remember. I don't remember anything when it was paid or how it was paid; it is so long ago I can't tell.

Q. Do you remember what the balance was?

A. No, I do not.

Q. Do you remember at what price the Erie and State street property was taken on account?

A. I stated in my other testimony exactly. My impression is I took that at $25,000, and there was an incumbrance on it of $5,000; that was my idea.

Q. So that it netted $15,000; do you mean the $20,000

was exclusive of the incumbrance, leaving the $15,000 to apply on the Dearborn street property?

A. I think I assumed the mortgage and allowed $20,000 besides. No, I don't think that was it; I think I allowed $15,000; that is my impression.

Q. Then the amount of cash paid would have been $10,000?

A. No, $15,000.

Q. The incumbrance assumed by the Pages was $30,000.

A. Yes, sir, I think the property was sold for $55,000.

Q. That would be $10,000 paid in cash, would it not?

A. Yes, sir.

Q. You don't remember who paid you that cash?

A. I do not.

Q. Was it not a fact that the question of Mrs. Page's interest in this Dearborn property was not fixed until he came to convey the property? Was anything said about the purchase being to her?

A. Yes, sir, there was no question about that. The idea was she was going to exchange this homestead for the other and for a better one; my homestead was deeded to my wife; Dunlap's homestead was deeded to his wife, and we were all at that time making it in our wives' names.

Q. When did Mr. Page commence these operations of loaning money to such men as Walker, and Honore and those men, at excessive rates of interest, or guaranteeing their paper?

A. I guess he didn't commence anything of that kind until, I should say, 1872 or 1873, along there.

Q. Are you sure he didn't do anything of that while he was with you?

A. Yes, sir, very sure; never loaned a dollar; we had no outside arrangements whatever. This was the only real estate we had bought up to that time; whatever we went into we went into together up to 1868.

Q. Who prepared the deed from you to Page?

A. I don't remember.

Q. Prepared by your attorney probably at that time?

A. Yes, sir, I don't know whether it was Norman Williams or not; it seems to me it was, but I am not positive.

Counsel states that the testimony on behalf of Mrs Belle F. Page is now closed.

IN THE CIRCUIT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS,
IN CHANCERY.

Alfred White
vs.
William E. Wheeler, *et al.* } *Bill.*

Horace D. Moore
vs.
Alfred White, *et al.* } *Cross Bill.*

January 25th, 1878.

And now the said complainants move the court that the said Benjamin V. Page, defendant, be ordered to pay over to the said receiver certain moneys in his hands derived from his wife, Belle F. Page, defendant, as appears on this examination before the Master and deliver over to said receiver five park bonds, to wit: bonds numbered fifty (50), fifty-one (51), fifty-two (52) fifty-three (53) and sixty-one (61) respectively, with the coupons attached, purchased out of moneys derived from the same source, amounting in the whole to the sum of seven thousand four hundred and thirty-nine dollars and twenty-seven cents and any further sum which it may appear is in his hands in like manner, all of which, both bonds and money the said defendant, Benjamin V. Page, claims as one of the administrators of the estate of Joseph P. Maxwell, for the benefit of said estate, and the motion coming on to be heard, the said parties, by their so-

licitors, being present, by consent of parties it is ordered by the court that said defendant, Benjamin V. Page, execute a bond with two good and sufficient sureties in the penal sum of ten thousand dollars to the clerk of this court and his successor in said office, conditioned that he, the said Benjamin V. Page, shall preserve the said moneys and the said bonds, with the coupons attached, without loss or impairment and shall, until the final decision of said cause and from time to time and at all times obey and perform all orders and decrees in said cause in reference thereto, and shall deliver up and pay over the same as this court may order.

January 29, 1878, receipt given by cashier of First National Bank of Chicago, reciting that on that date said bank had received from B. V. Page, an administrator of Maxwell, deceased, certain park bonds, moneys and notes, amounting to about the sum of eight thousand dollars, to be held subject to the joint order of the United States Circuit Court for the Northern District of Illinois, and the Judge of the Probate Court of Cook county in said state of Illinois.

Order of December 29, 1880, that plaintiffs have leave to examine C. H. Mulliken touching the account filed by him December 28, 1880.

The complainant, H. D. Moore, also offers in evidence on hearing transcript of record of Superior Court of Cook county, Ill., in case of said Moore *vs.* B. V. Page and Wm. Sprague, showing judgment in assumpsit for fourteen thousand dollars and costs, September 5, 1877, to the introduction of which counsel for Mrs. Page objected, for the reason that such testimony was not then admissible.

IN THE CIRCUIT COURT OF THE UNITED STATES.

Alfred White
vs.
William E. Wheeler, *et al.* } *Bill.*

Horace D. Moore
vs.
White, Wheeler, Page, *et al.* } *Cross Bill.*

It is stipulated that the following documents be considered as having been offered in evidence before the Master and as constituting a part of his report, namely:

1. The discharges in bankruptcy of Benjamin V. Page, William Sprague and William E. Wheeler, or certified copies of the same.

2. Certified copies of the letters of administration issued to Sarah Jane Maxwell and Benjamin V. Page from the County Court of Cook County in the matter of the estate of Joseph P. Maxwell.

3. Certified copies of the bonds filed by said admistrators.

4. Deed, B. V. Page and wife to William Sprague, dated February 2, 1875, recorded February 5, 1875, and deed William Sprague and wife to Belle F. Page of Dearborn avenue property, dated February 6, 1875.

5. Bond given by B. V. Page and J. McGregor Adams to Sarah J. Maxwell to secure proper accounting and payment of moneys belonging to estate of Joseph P. Maxwell.

HERBERT QUICK & MILLER,
Solicitors for A. White.
H. T. HELM,
Solicitor for H. D. Moore.
ISHAM, LINCOLN, BURRY & RYERSON,
Solicitors for Belle F. Page.
GEORGE W. SMITH,
Solicitor for Union Oil Co., Page, Wheeler & Sprague.

OPINION OF MR. JUSTICE HARLAN.

CIRCUIT COURT OF THE UNITED STATES,

NORTHERN DISTRICT OF ILLINOIS.

White
vs.
Wheeler, &c. } *Original, amended and supplemental bills.*

Moore
vs.
Wheeler, &c. } *Cross-bill.*

In a large portion of the property described in the pleadings, Page, it is clear, had no interest when this litigation commenced. That much was conceded on the oral argument, and the briefs of counsel show that all what there is of substance in the case relates to the Dearborn avenue property and a portion of the proceeds of its sale, and to the Lincoln avenue property.

The case is in many respects a close one. But after a very thorough sifting of the evidence, I find the following facts to be satisfactorily established in reference to the Dearborn avenue property:

In the year 1864 Page bought three lots at the corner of Erie and State streets in Chicago. The purchase was made for the benefit of the wife, and at a time when the husband was in a prosperous financial condition, entitled, without any injustice to creditors, to make a generous settlement upon the wife. On two of these lots he erected houses for the wife, in one of which they resided for several years.

In 1868 the other house and lot was sold to Gregory for $14,000, of which $5,000 was paid by the grantee assuming to meet a mortgage for that amount on the property, and the balance from time to time in cash. Mrs. Page's object in the sale to Gregory was with the proceeds to purchase another residence. The third or unimproved lot was sold

to Stark for several lots on the west side of the city, the title to which was *improperly taken* to Page. These lots on the west side of the cito were advantageously sold.

About the time these transactions were concluded, or shortly thereafter, Mrs. Page formed the purpose to buy the Dearborn avenue property, then owned and occupied as a residence by Mr. Lewis, a former partner of her husband. The price for that property was $55,000, in payment of which sum Mrs. Page assumed to discharge an incumbrance thereon of $30,000, held by the Connecticut Mutual Life Insurance Company; the Erie street lot then occupied by Mr. and Mrs. Page as a residence was taken by Lewis at $15,000, and the balance, $10,000, was paid in cash through her husband out of moneys he had received on the sale of the Stark lots, and on the sale to Gregory.

Page and wife moved into the Lewis house and occupied it as a residence until some time in 1877. The title to the Lewis property was by mistake taken in the name of Page. The wife supposed all the time that the title stood in her name. It certainly was understood by all around her to be her property.

It may be stated in this connection that the Dearborn avenue residence was destroyed by fire in 1871, and $19,000 insurance money was collected, of which $7,000 was retained by the party holding the $30,000 incumbrance, and the remainder was used in re-building the house.

Of the Dearborn avenue lot, 35 feet front was sold to Peck for about $9,000, and upon 25 feet additional a mortgage to Willing for $5,000 was placed. Both of these amounts were received by Page. The remainder of that lot (about 90 feet front), was in 1875 conveyed by Page to Sprague for the purpose of being immediately conveyed, and it was conveyed to Mrs. Page. That was done in rec-

ognition of the fact that the property really belonged to Mrs. Page, in whom the title should have been originally put.

In 1877 the Dearborn avenue property was sold by Mrs. Page to Hoyt for $45,000, of which the sum of $15,940.64 was on October 3, 1877, paid to her, as will appear from the checks of that date, made in her favor by W. M. Hoyt & Co. Out of the amount received from Hoyt, Mrs. Page let her husband have and retain $7,500 for the purpose of making good an alleged defalcation upon his part as administrator of the estate of Maxwell. She evidently had some fear that his personal liberty would be endangered if that deficit in his accounts as administrator was not provided for, and it was in part for the purpose of relieving him in that respect, that she sold her residence and out of the proceeds advanced to him the before-mentioned sum, to be applied as just indicated. The amount so received from Mrs. Page is now represented by certain bonds and notes, "*impounded*" (to use the language of counsel) in the First National Bank of Chicago, which holds them, subject to the order of this court and of the Probate Court. Both Page and wife claim that these bonds and notes really belong to the estate of Maxwell, being, as they contend, the proceeds of the $7,500 advanced by the wife to make good her husband's deficit as administrator of that estate.

The creditors claim that the bonds and notes in the custody of the bank belong to Page individually, and consequently are subject to their judgment debts.

Mrs. Page also claims that her husband is indebted to her for the before mentioned sum received by him from Peck and Willing; and in respect of her claims upon account of those sums she insists that she should be regarded as a preferred creditor as to her husband's individual estate.

Touching the Lincoln avenue property, Page borrowed

$10,000 to be used in improving it, and to secure that sum he put a mortgage upon it. For a like purpose he borrowed from Mrs. Maxwell the sum of $5,000, to secure which he gave her a conveyance of the same property, with warranty, taking from her, however, a written memarandum showing that the conveyance was in fact intended only as a security for the sum borrowed from her, and consequently to be treated as a mortgage.

The foregoing is a general outline of so much of the case as presents any points of difficulty. In ascertaining the facts I have treated as evidence on the hearing all that Page and wife said upon their examination before the Master. I am not prepared to say that under the circumstances disclosed by the record, those statements should be excluded as evidence. And I have also taken into consideration the facts proved at the hearing. Counsel will not expect me to enter upon an extended review of the facts and of the authorities cited by them. The authorities have been examined, and full consideration has been given to the comments of counsel upon both the authorities and the evidence. I content myself with saying that neither the original nor cross-complainants have made a case clearly entitling them to the relief asked.

As before said, Page was abundantly able, without injustice to his creditors, to have made in 1864, a gift of property to his wife. If the proceeds of the property then given to the wife went into the Dearborn avenue property, if the latter was purchased by or for the wife, and if the bonds and notes in bank are the proceeds of the money advanced by the wife out of the money obtained on the sale of the Dearborn avenue residence, and for the specific purpose of meeting the alleged deficit in the husband's account as administrator of Maxwell, if those bonds and notes were held by Page for that purpose—and that such are the facts, is shown by the evidence, with

reasonable certainty—then the equities of the wife are at least equal to those of the husband's creditors. That the title to the Dearborn avenue property was not put in Mrs. Page until 1875, by which time the husband had become seriously involved, if not insolvent, should not be taken as conclusive against her.

Notwithstanding the confusion that pervades the evidence, I cannot resist the conclusion that the title to the Dearborn avenue property was taken, originally, by mistake, in the name of the husband, *without the knowledge or approval of the wife*. The mistake was rectified before this litigation commenced, and the event should not permit that mistake (unaccompanied, as it was, by any fraudulent intent on the part of the wife) to defeat her just rights.

Too much confidence, I think, is attached by counsel for creditors to the fact that most of the transactions to which reference has been made, although involving the property of the wife, were conducted by and in the name of the husband. In the very nature of the relations existing between husband and wife, such must have been the mode in which these transactions have been conducted.

The same considerations control the decision of the case in respect to the property on Lincoln avenue. The debt due Mrs. Maxwell was discharged, and to the extent of $4,500, by money belonging to Mrs. Page. The conveyance to her was for the purpose of securing the sum so obtained from her, and to deprive her of the title without the payment of that sum, with interest, would be inequitable.

Upon the whole case I am of opinion:

1. That neither the original nor cross-complainants are entitled to any relief as to the property held by the First National Bank of Chicago. So far as this court is concerned, the bonds and notes held by that bank may be withdrawn by Page if he be still administrator of Maxwell's

estate, upon satisfactory evidence being furnished that his bond, as such administrator, is good and sufficient, or upon his executing a bond, with security, conditioned that he will, as administrator of such estate, faithfully account for such bonds and notes.

2. Mrs. Page has a lien upon the Lincoln avenue property, to secure the repayment to her of the said sum of $4,500, with interest, the conveyance to her being treated only as security for the satisfaction of such claim.

3. To the extent of the sums received by Page from Peck, and not accounted for, Mrs. Page is to be regarded in the distribution of her husband's individual estate as an ordinary creditor, and not as a preferred creditor.

4. As to all other matters the original, amended and supplemental bills must be dismissed. Counsel will prepare the proper decree, reserving, if it be desired, exceptions as to the action of the court in admitting, as evidence, the statements of Page and wife before the Master, and the facts proven at the hearing. The decree, when prepared, may be submitted to the circuit judge, or, if he so directs, it may be sent to me through the clerk, after it shall have been examined by counsel on both sides.

JOHN M. HARLAN, *Circuit Justice.*

IN THE CIRCUIT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS.

Alfred White
vs.
William E. Wheeler, *et al.* } *Creditor's Bill.*

Horace D. Moore
vs.
White, Wheeler, Page, *et al.* } *Cross Bill.*

This cause coming on to be heard upon the bill of complaint filed herein, and upon the amendments filed to said original bill of complaint, and upon the bill supplementary to said original bill herein, and upon the amendments to said supplementary bill, and upon the answers of the defendants to said bill of complaint and amendments thereto, and said supplementary bill and the amendments thereto, and upon the replications to said answers, and upon the cross-bill as amended of Horace D. Moore, filed herein; and upon the answers to said cross-bill and the replications to said last mentioned answers; and upon the intervening petition of the International Mutual Exchange and Investment Company and the amendments to said intervening petition, and upon the answers to said intervening petition and the amendments thereto; and upon the replications to said answers; and upon the examination of certain defendants, as reported by the Master in chancery to whom this cause was referred; and upon the testimony of certain witnesses as reported by said Master in chancery; and it appearing to the court that the First National Bank of Chicago and William M. Hoyt were duly served with process herein, but have made no answer hereto, it is ordered that said bills of complaint and the amendments hereto be taken as confessed by and against them, the said First National Bank of Chicago and William M. Hoyt.

And the court having fully considered all the matters and things contained in the pleading herein and all the examinations of defendants and the testimony reported in this cause by the Master, and having also fully considered certain oral and documentary evidence produced and submitted to the court at the hearing herein, and having heard the arguments of counsel, and being now fully advised in the premises, doth find the facts alleged in said bill of complaint of Alfred White as to the recovery of judgment by him in this court on the the first day of May, 1877, against

said defendants, William E. Wheeler and Benjamin V. Page and the sueing out and delivery to the Marshall of said district and return by said Marshall of the execution upon said judgment are true as alleged in said bill of complaint and that such indebtedness to said White was an individual indebtedness of said Wheeler and Benjamin V. Page respectively; and that there is now due to said Alfred White upon his said judgment and claim, the sum of twenty-six hundred and seventy-four dollars and thirty-seven cents, ($2,674.37.)

And the court further finds that the allegations in said cross-bill of Horace D. Moore, as to the recovery by him of judgment in the Superior Court of Cook county, in the state of Illinois, against said defendants, Benjamin V. Page and William Sprague and the sueing out and delivery to the sheriff of said county, to execute, and the return by said sheriff, of said execution, are true as alleged in said cross-bill and that such indebtedness was an indebtedness of said Page and Sprague as copartners; and that there is now due to said Horace D. Moore, upon his said judgment and claim, the sum of eigteen thousand three hundred and sixteen dollars and twenty cents, ($18,316.20.)

And the court further finds and decrees that from the real and personal property, assets, moneys, things in action, rights, credits and effects of said Benjamin V. Page individually, the commencement of this suit, (and which were herein directed to be and were assigned by said Benjamin V. Page to William D. Kerfoot, receiver thereof,) and the proceeds thereof, the said Alfred White is entitled to be first paid the amount so found due to him as aforesaid, (before the said Horace D. Moore and out of the copartnership assets of said Page & Sprague, after said Moore is paid); and that from the real and personal property, assets, moneys, things in action, rights, credits and effects of said Benjamin V. Page and William Sprague, as copartners,

(and which were herein ordered to be and were assigned by said Page & Sprague to said Kerfoot, receiver thereof,) the said Horace D. Moore is entitled to be first paid the amount so due to him as aforesaid, before said Alfred White and out of the individual assets of said Benjamin V. Page, after said White and Belle F. Page are paid, and the court doth further find and decree that the said original complainant Alfred White and the complainant in the cross-bill, Horace D. Moore have not, nor has either of them any lien or claim in equity to, or upon the premises in the pleadings herein described, and known as the Dearborn avenue property and described as follows: lots 17, 18 and 19, in block 18, in Bushnell's Addition to Chicago, in section 4, township 39, north, range 14, east of the 3rd principal meridan, and being in the city of Chicago, county of Cook, and state of Illinois nor any part thereof, nor to the proceeds thereof, or the moneys arising therefrom, or any part thereof, all which the court finds belongs to said Belle F. Page. That $7,415 of such proceeds or there abouts, which were invested in notes and other securities were placed in the First National Bank of Chicago, which now holds the same, subject to the order of the Judge of the Circuit Court of the United Sttaes for this circuit, and the Judge of the Probate Court of Cook county, and that the same belong to the estate of Joseph P. Maxwell, deceased, and so far as this court is concerned may be withdrawn by the qualified administrators of said estate. That said Belle F. Page holds the title to the premises in said pleadings described which are known as the "Lincoln avenue property" and are hereinafter described, to secure the sum of $4,500, and interest thereon, due her from said Benjamin V. Page, for moneys by her advanced for said Benjamin V. Page, and that she has a lien thereon to secure said indebtedness for $4,500 with interest thereon prior to the liens or claims of said Alfred White and Horace D. Moore; and that the said

premises at the time of the commencement of this suit and at the time of the execution and delivery of the assignment and deed of conveyance, made herein, under the order of this court, by said Benjamin V. Page to William D. Kerfoot, Receiver herein appointed in that behalf, belonged in equity to said Benjamin V. Page, individually subject to said lien of said Belle F. Page, and that such estate and interest of said Benjamin V. Page by said deed of conveyance or assignment passed to, and was, and is vested in said William D. Kerfoot as such Receiver herein of the property and effects of said Benjamin V. Page as aforesaid.

And the court doth further find, adjudge and decree that the said Mrs. Belle F. Page has a valid mortgage and lien upon the said Lincoln avenue property for the sum of forty-five hundred dollars, with interest thereon at the rate of ten per cent. per annum from the first day of November, A. D. 1877.

And the court doth further find, adjudge and decree that the said Mrs. Belle F. Page is an ordinary creditor of her husband in the distribution of her husband's individual estate to the extent of the sums received by her said husband from Peck and Willing on account of said Dearborn avenue property, and for which he has not accounted to her, and is entitled to be paid her pro rata share of the amount realized from the estate of said B. V. Page, in this cause, prior to the payment from said sum of anything upon the judgments obtained by the creditors of the firm of Page & Sprague, which firm consisted of Benjamin V. Page and William Sprague.

And it is further ordered, adjudged and decreed by the court that said original bill of complaint and the amendments thereto and the said supplemental bill and the amendments thereto, and the said cross-bill of Horace D. Moore, and the amendments thereto, and the said intervening petition and the amendments thereto, be and the same

are hereby dismissed for want of equity as to the following described property, to wit: lots seventeen, eighteen and nineteen in Bushnell's Addition to Chicago, in section four, township thirty-nine north, range fourteen east of the third principal meridian, being in the city of Chicago, county of Cook and state of Illinois, and also be dismissed for want of equity as to any and all of the proceeds of said last described property, whether said proceeds be in the hands of said Belle F. Page, Benjamin V. Page, or of any other of the parties to this cause.

And it is further ordered by the court that William D. Kerfoot, heretofore appointed Receiver in this cause, sell all the property, assets, things in action, rights, credits and effects in his hands as such Receiver, and also all the right, title interest and equity of redemption of the said Benjamin V. Page and of said William D. Kerfoot, Receiver, as aforesaid, in and to said lots twelve and thirteen, except the north twenty-six feet of lot thirteen, in block forty-five in the subdivision by the trustees of the Illinois and Michigan Canal, of the north half and the north half of the southeast quarter and the east half of the southwest quarter of section thirty-three, in township forty north, range fourteen east of the third principal meridian, subject, however to the said lien of the said defendant, Belle F. Page, for the amount of about forty-five hundred dollars and interest thereon, paid by her to the said Mrs. Maxwell upon said property, and also subject to any other prior liens; and that said Receiver give public notice of the time and place of holding and making sale of said premises, by publishing an advertisement thereof once a week for three successixe weeks in a newspaper published in the city of Chicago, county of Cook, and state of Illinois, the publication of such notice being not less than twenty days previous to the time of such sale; that at such sale any of the parties to this cause may be the purchaser or purchasers; that the said receiver shall

give any purchaser at said sale a deed of said premises, and that all the defendants to this cause and all persons claiming by, through or under them, or either of them since the filing of the original bill of complaint in this cause, be forever barred and foreclosed from all claim of, in and to said above described lands and premises, as against said deed so to be made by said receiver.

And it is further ordered that upon the making of said sale, said receiver make a report to this court of his doings and actings in regard thereto, and also as to all his accounts, doings and actings while he has been receiver as aforesaid; and that he also pay into court all moneys coming to his hands, as well from said sale as from every source, after deducting therefrom his proper commissions, charges and expenses, said proceedings to be distributed as this court shall direct, to the parties hereto, according to the priorities herein established.

And it is further ordered, adjudged and decreed that said original bill of complaint and the amendments thereto and the said supplemental bill and the amendments thereto and the said cross-bill and the amendments thereto and the said intervening petition and the amendments thereto be, and the same are, hereby dismissed for want of equity, as to all the other matters and things and property mentioned and described in them and each of them, except as to the property hereinbefore ordered to be sold by said Receiver, and except as to any property, moneys, assets, things in action rights and credits in the hands of said Receiver, which shall be also applied to the payment of the said claims according to the priorities aforesaid.

And it is further ordered, adjudged and decreed that the costs of this suit be paid out of the fund, if sufficient therefor, and after paying over the individual claims of creditors of B. V. Page, and the court reserves all further questions for further directions.

And the said complainants, Alfred White and Horace D. Moore pray an appeal to the Supreme Court of the United States, which is allowed upon their severally entering into bond within sixty days, with security to be approved by the court or by the clerk, in the penal sum of ten thousand dollars payable to said Belle F. Page.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM A. D. 1883.

HORACE D. MOORE, *et al.*, *Appellants*,
vs.
BUELL E. PAGE, *et al.*, *Appellees*.
} No. 1217.
Appeal from the Circuit Court of the United States for the Northern District of Illinois.

ARGUMENT FOR APPELLANT HORACE D. MOORE.

BY

H. T. HELM,

Counsel for Horace D. Moore, Appellant.

INDEX.

Origin and history of the case..... 2
Moore's claim 3
Statement of facts 5
Assignment of errors 7
Moore's cross-bill..... 8
Testimony of Sprague 9
" " B. V. Page 10
" " Mrs. Belle F. Page 30
Lincoln Avenue Houses 19
Order of Court evaded.....18
Facts established.....36
Opinion of Mr. Justice Harlan reviewed 38
Review of facts 42
Law of this case 44
An after-thought and a false pretense 44
Mrs. Page, though a creditor, postponed.....51
Maxwell estate claim 52
Objections to Page's evidence.....58
Objections to documentary evidence.....59
Moore's judgment in State Court 59
Attempted impeachment thereof.....63

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM A. D. 1883.

HORACE D. MOORE, *et al.*, *Appellants.*
vs.
BELLE F. PAGE, *et al.*, *Appellees.*

No. 1,117.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

ARGUMENT FOR APPELLANT HORACE D. MOORE.

May it please your Honors.

PRELIMINARY.

The complete record in this case was brought to this court for the present term, but at a later day an abridged, or agreed record, was printed by agreement of the parties, which embraces the pleadings entire and so much of the evidence as relates to the matters now in controversy.

Some portions of the orders of court and documentary matters offered in evidence at the hearing are only stated in substance, but sufficiently set out to present the points at issue. The numerals in parenthesis (—) in this argument, indicate the pages of the printed record.

This case was set for hearing in the court below; the first on the call before the Judge who heard it, but owing to the intervention of other matters, was forced along until the close of his labors at that term when it was only al-

lowed two hours for the hearing of evidence and argument, the result being that no real argument was made on behalf of the complainants in the court below. Without imputing fault to any one we may say that while we think the learned Judge failed to obtain a correct understanding of the case it was doubtless owing to the imperfect and very irregular method which was adopted for want of time at the close of a tedious and laborious term.

Origin and History of the Case.

Page & Sprague were a copartnership—dealers in paints and oils in Chicago—but also borrowed large sums of money in the east, at the current rates of interest there, and loaned the same in Chicago at speculative rates—two to three per cent per month.

The financial crash of 1873 disclosed their utter insolvency. They were doubtless insolvent in 1872 and prior thereto.

Their assets, all applied, paid from $80,000 to $100,000 of their liabilities, leaving $260,000 and upwards unpaid.

May 1, 1876. Alfred White recoverd a judgment against Benjamin V. Page, one of the firm, for a sum less than $2,000, and not being able to obtain satisfaction of an execution issued on such judgment, on May 15, 1877, filed in the court below, a general creditor's bill against the judgment debtor, making Sprague and divers other persons parties defendant.

Horace D. Moore.

In October, 1872, Page & Sprague had become indebted to Horace D. Moore in a sum of about $18,000 for money loaned. They had given a security upon real estate, represented to Moore to be good security, but in reality only worth about one-quarter or one-third of the sum.

In April, 1877, without the knowledge or consent of Moore and without effort to consult him, they placed on record a quit claim deed, releasing to Moore their equity in the property which Moore held as security for his claim, on which they were in default, both on the principal and a large sum of interest.

On account of the suspicion attached to this conveyance Moore was made a party defendant to the creditor's bill filed by Alfred White.

Moore, declining to accept the quit claim deed from Page & Sprague, foreclosed his trust deed, sold the land for about $5,000, and brought suit in the Superior Court of Cook County, Illinois, in the Northern District thereof, and recovered a judgment against Page & Sprague for $14,000 and costs, on which execution was issued and returned wholly unsatisfied, no property being found.

Moore having been made a defendant to the bill of White, and being a judgment creditor of Page & Sprague, answered that bill, and having exhausted legal process to collect his judgment, without avail, filed his cross-bill in equity in the creditor's suit then already pending in the court below, setting up his claim against the two debtors, Page & Sprague, contending for priority of lien over White, as to any estate of the copartnership of Page & Sprague, which might be discovered in the search for assets, and joined in all the al-

legations of the original bill, so far as they alleged fraud and concealment of assets on the part of the debtors, and prayed for a discovery and the appointment of a receiver.

White had previously sought ineffectually for the appointment of a receiver, but on the filing of the cross bill, and an amendment to the original bill, the court below—Judge Drummond—appointed W. D. Kerfoot as receiver of the firm of Page & Sprague, and he was duly qualified as such. (31).

Page & Sprague filed petition in bankruptcy soon thereafter.

Other Creditors.

Under the practice in the court below, several other judgment creditors filed their petitions (27 and 41) and were made parties, but the assets discovered not being more than sufficient to satisfy the prior claims of White and Moore, those parties failed to prove up their claims at the hearing and left the field to these two claimants.

Parties and Property.

The bill and cross-bill made divers persons defendants and set up a large number of transfers of real estate (pages ( ), but for lack of jurisdiction, want of proof and other causes, all were finally abandoned except the transfer of certain real estate to Belle F. Page, wife of the debtor, B. V. Page, and the proceeds and avails of such real estate which are now held subject to the final decision of this case.

Statement of Facts.

The debt of Page & Sprague to Moore was for money borrowed through the agency of H. F. Eames in October, 1872. (118).

In February, 1875, B. V. Page conveyed (51) to his wife, Belle F. Page, a property on Dearborn avenue in Chicago, worth from $45,000 to $55,000, being indebted to Moore and other creditors to the extent of $350,000, over $260,000 of which is yet unpaid and no assets. (102).

In October, 1877, and after the filing of the original bill of White in this case, this property was conveyed by Page and his wife to Wm. M. Hoyt (53), who paid them in cash $20,940 and assumed a mortgage to the Connecticut Mutual Life Insurance Co. for about $25,000 balance due.

Of this sum of $20,940, Mrs. Page actually used or appropriated $940, the residue, $20,000 was all used by B. V. Page, or found in his hands and in the property bound by this creditor's suit; and the proceeds and avails of this money thus derived constitute the subject matter involved in this appeal.

This property was the property of B. V. Page, and no one else, and was by him purchased in 1869 or early part of 1870 and *stood of record in his name on the records of Cook County, from the date of purchase until his conveyance to his wife in February, 1875, about five years, and during which period his debts and insolvency accrued.*

It was in every part the product, and acquisition of his business, money and capital.

No part of this property was brought to him by his wife. She testifies in this case that she brought him nothing.

It all came as the result of his money, business and procurement.

True— as claimed for Mrs. Page—at one time in 1864, B. V. Page conveyed to his wife seventy-five feet of ground at the corner of Erie and State streets, in Chicago; but *he sold* it *successively in three parcels*, she joining with him in the conveyances, and in 1870 he *had retaken the last of it to his own name and estate*, and purchased the Dearborn avenue property and held this latter for five years, and until his debts and insolvency were incurred.

The above is a concise, but accurate statement of the facts in this case, about which there is and can be no disagreement whatever.

The facts relating to this real estate not being known at the time of filing the original bill, Belle F. Page was not made party thereto, and no reference was made to this property—hence the sale to Hoyt pending this suit.

The bill was amended January 10, 1878, Belle F. Page was made party defendant and this transfer set up—on same date the cross-bill of Moore was filed—Belle F. Page was served with process, January 11, 1878.

On the 21st of January, 1878, the parties proceeded to the examination of B. V. Page as a defendant and witness in the case before the Master—and on the 22nd of January, Mr. Isham appeared for Belle F. Page.

Decree and Appeal.

His Honor, Justice Harlan, who heard the case below, having found the issues in favor of Belle F. Page, the two judgment creditors, White and Moore, prayed for an ap-

peal and Moore, the complainant in the cross bill, brings the case to this court. No appearance being entered for White, his appeal was, at the present term, dismissed by this court, and the case now stands on the appeal of H. D. Moore.

Assignment of Errors.

The appellant assigns the following errors in the decree and opinion of the court below:

1. That the said court erred in holding that the property by Benjamin V. Page and Belle F. Page, his wife, conveyed to William M. Hoyt was, at the date of said conveyance, as against the claim of appellant in equity, the property of said Belle F. Page.

2. That the said court erred in *not* holding that the said property was, at the date of such conveyance, the property of the said judgment debtor, Benjamin V. Page, and that the proceeds of said sale were subject to the equity and lien of the appellant's judgment and bill in equity.

3. That the said court erred in *not* holding that the conveyance of said property by said B. V. Page to his wife, Belle F. Page, in February, 1875, was fraudulent as against the rights and claims of the appellant, a judgment creditor of the said B. V. Page.

4. That said court erred in *not* holding that the proceeds of said sale to Wm. M. Hoyt, to wit, the sum of about $5,000 invested in the houses on Lincoln avenue and held by Belle F. Page, and the further sum of about $8,000 held in bonds and money by the First National Bank of Chicago were subject to the lien and claim of appellant, a judgment creditor of said B. V. Page.

It all came as the result of his money, business and procurement.

True— as claimed for Mrs. Page—at one time in 1864, B. V. Page conveyed to his wife seventy-five feet of ground at the corner of Erie and State streets, in Chicago; but *he sold* it *successively in three parcels*, she joining with him in the conveyances, and in 1870 he *had retaken the last of it to his own name and estate*, and purchased the Dearborn avenue property and held this latter for five years, and until his debts and insolvency were incurred.

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3. That the said court erred in *not* holding that the conveyance of said property by said B. V. Page to his wife, Belle F. Page, in February, 1875, was fraudulent as against the rights and claims of the appellant, a judgment creditor of the said B. V. Page.

4. That said court erred in *not* holding that the proceeds of said sale to Wm. M. Hoyt, to wit, the sum of about $5,000 invested in the houses on Lincoln avenue and held by Belle F. Page, and the further sum of about $8,000 held in bonds and money by the First National Bank of Chicago were subject to the lien and claim of appellant, a judgment creditor of said B. V. Page.

5. That said court erred in *not* holding that any and all claims of said Belle F. Page against the said houses on Lincoln avenue and all claims of said Belle F. Page or said B. V. Page or the estate of Maxwell, deceased, against the said funds deposited in the First National Bank of Chicago by said B. V. Page were to be postponed to the claim of said appellant upon said property and funds by virtue of his said judgment and bill in equity against the said B. V. Page, *et al.*

6. That said court erred in *not* decreeing a valid and first lien against all of the said assets and property in favor of appellant as against all of the defendants.

7. That said court erred in decreeing that the proceeds of the sale to Hoyt deposited in the First National Bank of Chicago belonged to the estate of Joseph P. Maxwell, deceased, a party not before the court and a party not properly making any claim to the same.

8. That said court erred in decreeing that Mrs. Belle F Page had a valid lien and mortgage on the Lincoln avenue property as against the rights of appellant.

9. That said court erred in decreeing that said Belle F. Page was an ordinary creditor of B. V. Page and entitled to a priority over the claim of appellant.

Moore's Cross-Bill.

The question of Moore's judgment *being in the State Court* will be met in a subsequent part of this brief.

Though a cross-bill in form and partly in substance, it is mainly the original bill of a co-complainant interested in the matter in controversy on like equities with the complainant.

This court has decided in *Minnesota Co.* v. *St. Paul Co.*, 2 Wall, 633, that it will look beyond the form of a pleading in equity and to the substance of the same in determining the force and equities of the case.

Moreover he was a co-partnership creditor of Page & Sprague and had the right to insist, as he does insist, that the real estate by Page conveyed to his wife was purchased and improved in great part with the assets of the insolvent firm, and therefore, as to such assets, he has a priority over White.

Although White's appeal is dismissed, his bill is still in the case, and Moore adopts all of the same that is pertinent to the issues between these creditors and Belle F. Page. In such a case the cross-bill is properly retained, although the original bill had been dismissed.

Worrell v. *Wade*, 17 Iowa, 96.

TESTIMONY.

January 21, 1878, before the Master, William Sprague, one of the defendants, testified (45) that he had been in partnership with Benjamin V. Page for 15 years. Mr. Page conveyed to him some property on North Dearborn street (Dearborn avenue) where he lived—*no consideration paid for the conveyance*—witness afterwards conveyed this property to Belle F. Page, wife of B. V. Page—*no consideration for the deed.* (45)

The firm of Page & Sprague haven't done any business for the last half dozen years but they kept up the firm name, have not been in mercantile business during that time,—renewing their debts. He testified that they had gone into a corporation called "Page, Sprague & Smith."

The court will understand from the subsequent testimony why a bankrupt firm, owing $260,000 more than their assets will pay, put every thing into a *corporation*, and continue business as long as they can under the new cover thus secured. More light is derived from the following statement.

Sprague further testifies: (46) "When we made up the corporation, 'Page, Sprague & Smith,' we had surplus of $60,000 and called it $100,000 for the purpose of incorporation, but no estimate was made by any one but ourselves. *I think we must have over-estimated the assets a good deal.* After making the new corporation we found ourselves unable to pay the debts, and had to make a compromise on the 22nd of last August; we settled at fifty cents on the dollar, which left us nothing, I think. We have not made that promised settlement yet; we have made two payments on it—paid about two-thirds of the compromise; *the compromise didn't include all the debts of the firm.*"

He further says: (46) "Since the first, Page & Sprague have done no other business, except their paint and oil business, *except loaning money to Samuel J. Walker; I believe that got to be the principal business of Page & Sprague*; think we have Walker's notes and checks for over $100,000. * * * We *didn't always have the title examined when we loaned money; two per cent. a month was what we always got from Walker.*" * * *

"These securities all appeared on the bankruptcy and have all been *sold out from under us by first mortgages.*"

JANUARY 21, 1878.

Benjamin V. Page, one of the defendants, being sworn, testified as follows: (51)

Q. *Were you ever the owner* of lots 17, 18 and 19 in Block (18,) eighteen, in Bushnell's Addition? (This is the Dearborn avenue property).

A. *I was.*

Q. Did you join in conveying them to Mr. Sprague?

A. Yes, sir.

Q. At whose request did he convey that to your wife?

A. *Mine.*

Q. How long had you held the property?

A. *I owned it in 1869 and 1870.*

Q. Whom did you buy it from?

A. William G. Lewis.

Q. *Who paid for it?*

A. *I did.* (52)

Q. What did the house cost?

A. Forty-five thousand dollars or thereabouts.

Q. Give me the number on Dearborn street that you owned; was it three full lots?

A. Three full lots.

Q. 150 feet then, was it?

A. Yes, sir; part of lot 19 is now held by Henry J. Willing. He loaned $8,000 on it—on 25 feet of it, and $5,000 *of it went to Page, Sprague & Smith, and $3,000 to the Union Oil Co.* * * * The conveyance to Willing was by straight deed and he gave me a memorandum back. Giving security on land by absolute deed is the usuual way I do. It is the only way I ever give security.

Q. What did you do with the balance of the lots 17, 18 and 19.

A. *I sold* to John L. Peck the 60 feet that was the South ½ of lot 19, and the North 30 feet of eighteen; I got $250 a foot for it. The sale was made two or three years ago.

Q. What did you do with the balance of it? (53)

A. Mrs. Page holds the balance.

Q. How much is the balance?

A. Ninety feet.

Q. That is still in her name?

A. It was only 35 feet I sold to Mr. Peck, * * * leaving 90 feet.

Q. And Mrs. Page still holds it?

A. No, sir; she don't still hold the property, * * * it was sold to Wm. M. Hoyt.

Q. When was that sold?

A. In September or October, 1877.

Q. Who sold it?

Q. William D. Kerfoot.

Q. Who employed William D. Kerfoot?

A. *I did.*

Q. How much did you get for it; at what price was the property sold for you?

A. Forty-five thousand dollars.

Q. On what terms were the payments made?

A. Cash.

Q. All cash?

A. All cash.

Mr. Page further along in his long and contradictory explanations of this matter states in substance, that the mortgage to the Connecticut Mutual Life Insurance Co. and the taxes absorbed all of this sum, except $15,940, and for that sum he received from Mr. Hoyt a check (56) to the order of his wife, and that at a later period he settled the matter of the mortgage with the Insurance Co., and was allowed a credit of $5,000 for paints and glass *by Page & Sprague (the old firm)*, furnished at different dates to that company, and Mr. Hoyt then (64, 65) paid to him (Page,) the further sum of $5,000, making a total of $20,940, paid by Mr. Hoyt to Page or his wife on account of that sale, and further that of $15,940

Mrs. Page (61 and 110) received $940 and the residue *she loaned to him*, $5,000, to pay a debt which he owed to Mrs. Maxwell and about $8,000 to enable him to cover (54, 71 and 111) a defalcation to the Maxwell estate, of which he was oncof the administrators, and about $2,000 for the Union Oil Co.,—which was B. V. Page. (65) That he had previously borrowed $4,515 of Mrs. Maxwell and had conveyed to her (in his usual way,) by absolute deed, the houses on Lincoln avenue (of which hereafter), and that he took about $5,000 of this money and paid the debt to Mrs. Maxwell and thereupon Mrs. Maxwell conveyed (50 and 51) the Lincoln avenue property to Mrs. Belle F. Page; and it is claimed that she holds it as mortgagee to secure that sum and the interest.

Now further as to the $10,000 held for the Maxwell estate, and the Union Oil Co.

He says: "She has loaned me as much as $2,000 of it "—the Union Oil Company is the name of the company "under which I have been trying to do a little business. "* * * The company is not solvent. It was not sol- "vent when she loaned the money to it. * * * I have "the management of the company. I was trying to make "a living out of it."

The court is invited to read the statements of Mr. Page in reference to this matter as they appear in full in the agreed record, and it will be seen that for reckless statement connected with reckless use of his creditors' money, Mr. Page will stand equally approved. He says that while acting as administrator of the estate of Maxwell he received $10,000 life insurance money, and he used it; that to repay that he tried to sell the house, and as soon as it was sold Mrs. Page loaned him $10,000 and he replaced $8,000 to the estate.

Q. She loaned you $8,000; what did you do with it?

A. I have got it in my possession as adminstrator.

Q. You have it now? (55)

A. Yes, sir.

Q. Where is the money?

A. It is in my possession, and I can produce it here if you want to see it.

Q. You have it in your pocket?

A. No, sir.

Q. You have it in the bank?

A. No, sir.

Q. What is the form of it?

A. Five thousand dollars of it is in South Park bonds and three thousand dollars of it is in money. * * *

Q. What was the date of that sale?

A. October, 1877.

Q. What was the date of the deed to Sprague?

A. February or January, 1875. (57).

Q. You had given a bond as administrator of the Maxwell estate, had you?

A. Yes, sir.

Q. There has been no report made to the court by you of the money or there is no change made in your liabilities as administrator since you got this money?

A. No, sir. (57)

Q. It has not been changed in any way except that you consider in your mind that you hold security for that bond instead of for other purposes?

A. That is what I took it for.

I mean the appropriation when you say that Mrs. Page loaned you the $8,000 and you applied it that way; by that you mean in your mind's eye you applied it thus.

A. That is the reason I had to sell that house, and that is the reason I wanted that house sold.

The further answer of Mr. Page on that subject is characteristic and will be found at length on page 58 of the above record.

At a subsequent day he testifies as follows: (70)

Q. $7,500 of that $16,000 you took to Mrs. Page went to the Maxwell estate. In what form and through whom did the Maxwell estate, if it did receive that sum, receive it?

A. I received it as administrator of the Maxwell estate from Mrs. Page, in the form of certificates and money, I can not answer exactly as to whether it was part certificates and part currency. It was mostly in certificates. I can not state approximately how much of that $7,500 consisted of certificates, and how much of currency; I have made careless statements here. I should say the larger part of it was certificates of deposit. I received the certificate from Mrs. Page. If I received it in cash, I received that from her also. In what form I don't remember. I can't tell whether I received it in the form of a check or in currency.

Q. In what form did you pay it over to the Maxwell estate? (71)

A. I *laid it away and put it into securities. I laid it away in a drawer at home, and locked it up.* Probably in the shape of certificates. I don't remember in just what shape I received it all. I received in cash, money or its equivalent $7,500, and laid it away and locked it up for the Maxwell estate. I cannot tell you any more definitely.

Q. Did you not, after the sale or prior to that, act as the business person for Mrs. Page, or did she attend to those negotiations, and gather this money together herself, and make those payments?

A. I suspect that I acted as her business agent to some extent.

Q. That being the case, if there was money drawn for the purpose of paying this claim to the Maxwell estate from that bank, was that money drawn by Mrs. Page and paid to you, or was the check given to unable you to draw it?

A. *The things most've went through my hands all the time*, I can't remember the details of that matter.

The foregoing examination occurred on the 21st of January and on the 22d was resumed, when Mr. Isham entered the appearance of Mrs. Belle F. Page.

The attention of the court is particularly directed to the answers of Mr. Page from this stage of the case.

It clearly appears that of this $15,940 the sum of $950 was deposited to the credit of Mrs. Page; the residue, in one way or another, was used by B. V. Page.

He says there was only $950 deposited (62 and 63).

Q. The balance, according to your present recollection, was received in certificates of deposit?

A. I don't recollect anything else.

Q. Your recollection is that you received one of those certificates for $5,000 with which you purchased the park bonds?

A. I don't think the park bonds were purchased with one certificate; I think the certificate was part of it. * *

Q. You said yesterday that there was $5,000 of that money invested in park bonds and $3,000 in something else; have you got that cash yet? (65).

A. Cash or equivalent to cash. * * * There were five $1,000 bonds.

A. And this other $3,000 that you say is the same as cash, in what form is that?

A. *I don't care to tell you.* (65).

Q. Is it wholly under your control?

A. Entirely.

It was developed in his further examination that the proceeds of this $8,000 were held by him in the securities named in the following application to the court, on which an order was entered by the court as follows (132):

IN THE CIRCUIT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS,
IN CHANCERY.

Alfred White
vs.
William E. Wheeler, *et al.* } *Bill.*

Horace D. Moore
vs.
Alfred White, *et al.* } *Cross Bill.*
January 25th, 1878.

And now the said complainants move the court that the said Benjamin V. Page, defendant, be ordered to pay over to the said receiver certain moneys in his hands derived from his wife, Belle F. Page, defendant, as appears on this examination before the Master and deliver over to said receiver five park bonds, to wit: bonds numbered fifty (50), fifty-one (51), fifty-two (52) fifty-three (53) and sixty-one (61) respectively, with the coupons attached, purchased out of moneys derived from the same source, amounting in the whole to the sum of seven thousand four hundred and thirty-nine dollars and twenty-seven cents and any further sum which it may appear is in his hands in like manner, all of which, both bonds and money the said defendant, Benjamin V. Page, claims as one of the administrators of the estate of Joseph P. Maxwell, for the benefit of said estate, and the motion coming on to be heard, the said parties, by their solicitors, being present, *by consent of parties*, it is ordered by

the court that said defendant, Benjamin V. Page, execute a bond with two good and sufficient sureties in the penal sum of ten thousand dollars to the clerk of this court and his successor in said office, conditioned that he, the said Benjamin V. Page, shall preserve the said moneys and the said bonds, with the coupons attached, without loss or impairment and shall, until the final decision of said cause and from time to time, and at all times, obey and perform all orders and decrees in said cause in reference thereto, and shall deliver up and pay over the same as this court may order.

Evasion of the Order.

Mr. Page, at the next hearing of testimony, on the 29th, presented a receipt of the bank for the securities in substance as follows: (133)

Receipt of First National Bank.

January 29, 1878, receipt given by cashier of First National Bank of Chicago, reciting that on that date said bank had received from B. V. Page, *an* administrator of Maxwell, deceased, certain park bonds, moneys and notes, amounting to about the sum of eight thousand dollars, to be held subject to the joint order of the United States Circuit Court for the Northern District of Illinois, and the Judge of the Probate Court of Cook county in said state of Illinois.

A deliberate evasion of the order and process of the court.

And this is the *impounding* of the securities which is referred to in the opinion of the court below. They were not deposited by order of the court, but to evade the order of the court in this case, an order which had been entered *by agreement* of the parties. The act was characteristic.

Lincoln Avenue Houses.

The facts relating to the $5,000 of this Hoyt check invested in the houses on Lincoln avenue are as follows. Mr. B. V. Page says:

(50) I know of a conveyance from Sarah J. Maxwell to Belle F. Page, my wife. It was made about the 15th or 25th of October last. She conveyed some houses up on Lincoln avenue. The negotiation was carried on through me. Mr. Osborne acted for Mrs. Maxwell, as her attorney. The negotiation culminated when I paid the money I owed Mrs. Maxwell.

Q. What was the consideration of the conveyance to Mrs. Page?

A. Mrs. Page loaned me——

Q. No. What was the consideration for the conveyance?

A. A quit-claim deed.

The consideration named in it was, I suppose, one dollar.

There are six buildings on that property, five of them dwelling houses, and one of them a store. I erected them with William A. Furber, a builder. They cost $9,000 or $10,000. I borrowed $5,000 from Mrs. Maxwell, and it was mostly invested in the houses—from four to five thousand of it. That was all I furnished. I furnished nothing in the way of material. The corporation of Page, Sprague & Smith furnished about $250 worth of window glass and I paid them out of the money I stated. That was included in the $5,000.

Mrs. Maxwell did not, at that time, hold the title to the land. Mrs. Maxwell acquired title when I borrowed the money from her. That was in the fall of 1876 I conveyed to her. My wife joined in the deed; the houses were going up at the time.

(51) Baird & Bradley furnished the rest of the money to put up the buildings and buy the land. I bought the land in September or August, 1876. I paid about $4,000 for the land. I expected the $9,400 to cover the cost of land and building, but it did not. We had a bad contractor and he failed. I had to put in additional money. Part of the money I borrowed on my note. I borrowed the money and paid the whole consideration for the property.

When I borrowed the money from Mrs. Maxwell I gave her an absolute deed. I took something to show there was a right of redemption—while she held it there was nothing on the record to indicate my interest in it. It remained that way till Mrs. Page got the money to pay her, until October 15th or 25th, until it was deeded to Mrs. Page. I requested Mrs. Maxwell to make the deed to my wife. Up to that time I had received the rents that came from the property. *I have collected the rents since.* It has rented for about $125 a month. There are six tenants; $125 is about all I have received a month. Two of the houses are $30 a month, two of them $25, and the others $20, if I recollect right. That includes the store.

Q. That would be $140.00?

A. I think the rents have not all been collected.

We have set out the testimony of B. V. Page relating to this property on Lincoln avenue at considerable length, not for the purpose of showing that it is the property of Page, the debtor, a fact which is admitted in this case, but for the purpose of showing the *fraud between him and his wife in conveying the property to her on a secret trust*, giving it the appearance of a purchase by Mrs. Page from Mrs. Maxwell, which was false and a clear proof of fraud.

Testimony of Mrs. Belle F. Page, one of the defendants.:

She says (108) she had no property when married. * * * (109) I hold some property on Lincoln avenue—a block of houses. I don't know how many houses. I don't know the size of the ground. I received the conveyance from Mrs. Maxwell. I hold them as security for $5,000, money loaned by me to Mr. Page. Chas. H. Mulliken has received the rents. * * * (111) I don't remember how the $5,000 to Mrs. Maxwell was paid or to whom paid. My husband did the business. I did not see Mrs. Maxwell in regard to it. Did not give her the money or receive the papers from her; did not negotiate with her or have any conference about it. (112.) Mr. Mulliken has not given me a report or account of his management of property.

The Claim of Property in Mrs. Belle F. Page.

We are now prepared to examine the grounds on which it is pretended that this property on Dearborn avenue, the property sold to Hoyt October, 1877, was purchased with the proceeds of property previously owned by Mrs. Page.

The facts, concisely stated, as claimed by defendant Page and his wife, are, that Mr. B. V. Page in 1864 purchased (90) from Dunlap and Porter 75 feet of ground on the corner of North State and Erie streets. He paid for the same out of his own money and took deed from the vendors to his wife, Belle F. Page. It was a gift by him to his wife. (99) Page erected two houses on that land out of his own funds, covering 50 feet, leaving 25 feet vacant.

Soon after the purchase from Dunlap and Porter, Page sold the vacant 25 feet to James L. Stark (99), and his wife joined in deed of same to Stark. For this 25 feet, Page, the husband, received in his own name, four lots in the

West division of the city, worth $7,500—Page afterwards received that much for them.

One of the two houses on the residue of the State and Erie street property, soon thereafter was sold by Page (99) to C. A. Gregory for $13,000, Page and wife conveying and Page receiving the proceeds of sale (36).

The corner house covering 28 feet was occupied by Page and wife as a homestead until 1869, when Page purchased (36 and 89) of Wm. G. Lewis the 150 feet on Dearborn avenue, for $55,000, Page and wife conveying to Lewis this dwelling and 28 feet on corner of State and Erie at $15,000, and *Page paying* $10,000 cash *and assuming a* mortgage for $30,000 to the Connecticut Mutual Life Insurance Co.

Property conveyed by deed to Page he assuming the incumbrance.

Such is the history of the State and Erie street property and the purchase of the Dearborn avenue property.

The subsequent history of this last property has been given. 35 feet of the same (52 and 53), sold by Page and wife to Peck for $8,750, *cash received by Page.*

Of the residue *90 feet held for five years* by Page and conveyed to his wife February, 1875; and in October, 1877, sold to Hoyt, for cash $20,840, of which Page received $20,000 and wife $940 or $950 only.

Subsequent to this conveyance of this 90 feet by Page to his wife, and February 28, 1876, one year thereafter, (42) Page sells, and he and his wife convey the residue 25 feet, to H. J. Willing for $8,000, which goes into Page's oil business (52), Page & Sprague and the Oil Co.

We call attention to the fact that the conveyance to his wife in February, 1875, did not include the whole of the property then held.

The property, after the purchase from Lewis, stood in name of B. V. Page—was insured by him as his own property and after the destruction of the house by the fire of 1871, he (91) collected $12,000 of insurance and rebuilt the house (52) at a cost of $45,000, and before the sale to Hoyt had paid $7,000 of the mortgage (91) held by the Connecticut Mutual Insurance Co., and at the time of the sale, made a settlement with the company and was allowed $5,000 more as having been paid on that mortgage (64 and 65) in paints and glass and this sum he received from Hoyt; in all $20,940.

Revised Testimony of B. V. Page.

The testimony of Mr. Page relating to these property transactions was taken in January, 1878, and in presence of his own counsel, and as alleged for Mrs. Page, (nearly all the time) and was cross examined by both of these gentlemen, yet no reference was made to the property, by him previously conveyed to his wife, and no claim advanced that this Dearborn avenue property was purchased with the proceeds of that property until we find the following:

Mistake Discovered.

November 27, 1880

(75) Application of witness on signing the foregoing testimony to make the following explanation:

"I wish to correct my testimony, commencing, I think, on page 93, regarding the Dearborn and Maple street house. *I testified that I bought and owned that house;* I testified *carelessly;* I held the legal title to it, but it was bought and paid with Mrs. Page's money and property, and I never owned it; Mrs. Page never knew it was deeded to me until after it was transferred to her, and I still owe her, upon her own separate property, some $10,000. The house built after the fire was built with funds belonging to her."

Examination of B. V. Page, defendant, taken 14th December, 1880.

Present—J. S. Miller, for complainant; H. T. Helm, for H. D. Moore; J. V. LeMoyne, for Inter. Mut. Ex. Co.; Wm. Burry, for Mrs. B. F. Page.

175) Q. Mr. Page, in the explanation that you added to your former testimony, you say that you have heretofore testified carelessly; to what part of your testimony does this apply?

Counsel for Mrs. B. F. Page objected to any further examination of B. V. Page, on the ground that he has been examined and cross-examined, and his testimony signed; that the case has since been put at issue and referred to the Master for proof; and insists that, if his testimony is taken now, it shall be taken as that of a witness, and not of a defendant.

Objection overruled by Master, and certified to, and overruled by Judge Drummond, who decided that Mr. Page could still be examined as a defendant; and, therefore, the examination of B. V. Page as a defendant, and under the order of January 14, 1878, was proceeded with.

Notice by counsel for Mrs. Page that he shall insist before the court that the further testimony of Mr. Page be considered as a witness.

A. It applies to questions put to me by Mr. LeMoyne, respecting the ownership of lots 17, 18 and 19 in block 18, in Bushnell's Addition. I don't remember that it applies to anything else.

(76) Q. Was that statement made by you after consultation with any attorneys; if so, with whom?

Objected to.

A. When I was sent for to sign this testimony, almost three years having expired, I didn't remember clearly what it contained, and I went to Mr. Isham and asked him on behalf of my wife to allow some one to look it over with me, and it was read to me at my request; and when it was read I saw the mistakes I had made.

Q. Then you did not discover that any mistakes had been made until about three years after the testimony was given?

A. Yes, certainly I did.

Q. When did you first discover this?

A. I can't tell you; immediately after the testimony was given, probably. I don't remember when. But what I wish to say is that I didn't read the testimony for so long a time that I didn't recollect exactly what it contained.

Q. When did you then recollect that there had been any mistakes made in it?

(77) A. After the testimony was given, I think it was Gen. Leake that called my attention to the fact that I probably didn't see the point of your questions when asked in regard to lots 17, 18 and 19, in Bushnell's Addition. I think it was Gen. Leake that told me—talked it over with me. He was at that time my attorney.

Q. Was it after you had the point of the question explained to you by counsel that you discovered that you had testified carelessly?

A. I don't recollect.

Q. You don't recollect of making that discovery before that time?

A. I only know that my testimony there is incorrect. I wish to say I was in great trouble at that time, and, being questioned and cross-questioned by half a dozen lawyers, perhaps I was a little confused.

Q. Then I understand you to say now that this correction was made by you in your testimony after revising the testimony in company with Mrs. Page's solicitor?

A. I went to Mr. Isham and asked him to have some one read that testimony over to me, or with me.

Question repeated.

A. I didn't receive any testimony in connection with Mrs. Page's solicitor.

Q. Re-read it—reviewed it?

A. It was after it had been read to me by some one in the office of Mrs. Page's solicitor that I corrected the testimony.

Q. Did they call your attention to the form in which your answers had been given in the testimony in this regard?

(78) A. I don't think so. I think my attention was directed to it as it was read to me.

Q. When you say that you testified carelessly, do you mean that you testified erroneously?

A. I mean that when I testified I probably didn't see the point of your questions as I see it now.

Q. But you were not answering because you saw the point, were you, but because you were stating the facts as they occurred?

A. Well, I answered erroneously.

Q. Because you didn't see the point?

A. Yes, I didn't see the distinction you meant to make. My answer in regard to the amount I paid for building the house was perfectly correct. I don't know at the present

time whether the property was conveyed to me by William G. Lewis or Mrs. William G. Lewis. I can't tell whether I knew at the time I gave the testimony before.

Q. Was your recollection better at the time you gave that testimony, or three years subsequently, when you re-read, in company with Mrs. Page's solicitor?

A. I can only say that my testimony three years ago, there, is incorrect.

Q. According to your present recollection?

A. According to these facts. I have looked up the facts since then. I have not looked up the facts as to whether the deed was made to me, as stated in former examination or not. I have not looked up the amount I paid for the building of the house after the fire. When I stated that I joined in conveying that to Mr. Sprague, and that Mr. Sprague had, at my request, conveyed it to Mrs. Page, it was probably correct.

It was erroneously stated in my former testimony, that I was the owner of lots 17, 18 and 19, and that I paid for them, whereas, they were paid for by property belonging to Mrs. Page; that property was paid for by proceeds property belonging to Mrs. Page. I don't recollect of any other statement in my former testimony that was erroneous. I stated all that I cared to—all that I recollected or thought of there.

(79) Q. You say you don't own those lots; do you mean to say you never owned them?

A. I never owned them.

Q. Did you ever have any interest in them; if so, what?

A. They were paid for with Mrs. Page's money, and it was intended they should be deeded to her at the time the purchase was made. It was a mistake, they were not. It was the mistake of the attorney who made the papers. I don't recollect the attorney. It might have been mine in not giving directions properly.

Q. Did you ever have any interest in those lots; if so, what interest?

A. They always belonged to Mrs. Page. I never owned them.

Question repeated.

(79) A. I am not aware of ever having had any interest in them, excepting that Mrs. Page is my wife, and the interest I might have from that fact. Either Mr. or Mrs. Lewis, or both, conveyed them to me. I don't recollect to whom the deed was delivered. I don't recollect the details of the transaction. I don't know whether it was delivered to me or Mrs. Page. *I don't recollect when I first discovered the mistake had been made of conveying them to me. It is my impression that I knew it at the time, and had always known it, for it had been in my mind to transfer the property, but I didn't consider it very important, thinking it could be done at any time.* I don't know whether I filed the deed for record. It is a dozen years or more ago. I can't tell definitely what was the purchase price of those lots. I have an idea about it, that it was a house of Mrs. Page's on the corner of Erie and State streets, she assuming a mortgage on the Lewis house, and $5,000. The mortgage assumed was $30,000.

Q. Who assumed that?

A. The purchaser of the house assumed it.

(80) Q. Didn't you assume that and agree to pay it?

Objected to, as leading and hearsay.

A. Very likely. I don't remember anything about it. I don't know whether the assumption by me is shown by the deed.

I paid the $5,000 for Mrs. Page. I got the money from her, from property of hers that I had sold. I got the money from the other property within a year—it might have been six months, or even three. I sold it for money, or for notes that were equivalent to money. That property of Mrs.

Page's was the house next to the corner of State on Erie street—next to the corner house east of State on Erie. This is the second house; another house next to it I traded for the Lewis property. I sold one to Charles Gregory; I think for $13,000. Part of that money went to pay Mr. Lewis for the property on Dearborn street. That property on State and Erie streets had stood in Mrs. Page's name since 1864 or 1865. It had been bought specially for her. I don't recollect how much of the proceeds of the house sold to Gregory I paid to Lewis. I merely give my impressions of the purchase money of the Dearborn street house.

Mr. Page further shows the history of the property on State and Erie streets, and the various sales as before stated in detail, and also the purchase of the Dearborn avenue property (89), and the three successive sales of that properts (91), the destruction of the house by fire, his collection of the insurance, and the affidavits of ownership (91 and 92) made by him in order to collect that insurance, and the building of the new house.

(54) He says he paid the interest on the loan to the agent of the Commercial Mutual Insurance Co. (92)

No accounts were kept by him or by Page & Sprague of moneys due to Mrs. Page (93), or of moneys received from insurance or sales of property, nor whether the books of Page & Sprague show the payment of the interest to the Insurance Co., or (94) the taxes on any of these pieces of real estate. He paid all these taxes.

Mr. Berry, counsel for the Pages, asks him:

(100) Q. Why was the deed of the Dearborn avenue property made to you instead of to her?

Objected to, as not competent.

A. It was a mistake; it was not intended to be made to her, as I recollect it.

Q. Have you any idea of when she became aware that the deed was not made to her?

A. My recollection is that I had it always in mind to transfer the property back. It seemed easy to do it at any time, and my recollection is that *I neglected it and there was never anything spoken between us in regard to it.*

Mr. Page was further (83 to 89 and 102) examined as to his debts and shows that, after paying $80,000 to $100,000 and exhausting their assets, $260,000 went into his bankruptcy schedule unpaid, but he pretends they were mostly secured, and *thinks* the security adiquate. It further appears that they failed to pay their mercantile paper in 1872, and continued to renew it ever after, until they filed their petition in bankruptcy, in January, 1878.

Mrs. Belle F. Page.

The testimony of Mrs. Page is mainly as follows:

Examined by Mr. Helm.

(108) My name is Belle F. Page; am defendant; am wife of Benjamin V. Page; married April 14, 1859. Have never been engaged in business on my own account.

Q. What property, if any had you when you were married?

Objected to as not a proper subject for examination.

A. None.

Q. What property has Mr. Page given you at any time, or caused to be conveyed to you since your marriage?

A. The property on the corner of Erie and State streets.

Q. Any other property that you remember?

A. Yes, sir; there has been other property.

MR. ISHAM: We object to all these questions.

I can not state what other property he has given or caused to be conveyed to me. I don't remember any other real estate he has at any time given to me. I think there were three lots at the corner of Erie and State streets; I am not positive.

MR. ISHAM: We wish to enter a general objection to all questions that do not relate to property which it is sought to have passed into the hands of a receiver.

(109) There were two houses. We occupied one and sold one to Mr. Gregory. The other lot was a vacant lot. Sold to Mr. Gregory in 1864 or 1865. I don't remember the exact amount received from Mr. Gregory for that property. I can't remember whether it was recived in money or property. I don't remember whether that property was subject to any incumbance at time of sale to Gregory. Sold the vacant lot to James L. Stark. Sold the house occupied by myself to William G. Lewis, in exchange for other property. Don't remember the price or value put on house sold to Lewis. Don't remember price put on house sold to Gregory. Don't remember price put on house sold to Stark. Received from Stark property in exchange. I don't remember exact location of that property; it was on the west side. It was unimproved, I think. I saw the property received from Stark. I went to look at it before it was exchanged. I don't remember the number of lots; it was more than one. Don't remember what I did with those lots, or either one of them. I hold some property on Lincoln avenue; a block of houses. I don't know how many

houses. I don't know the size of the ground. I received the conveyance from Mrs. Maxwell. I hold them as security for $7,000 money loaned by me to Mr. Page. Chas. H. Mulliken has received the rents. He uses them for the benefit of the property, for taxes, insurance and repairs. I received $200 from those rents this summer. I also received a small sum when it first came into my hands, but don't remember the amount.

I received no rent from the Erie street property while I was holder of it. The house sold to Gregory was built by Mr. Page. As soon as completed we occupied the other house, from its completion until it was sold to Lewis. I held the Erie street property six years. Mr. Page paid the taxes on those three lots during all the time it was held by me. The property on Dearborn avenue and Maple street was received in exchange for the Erie street property on which we lived. There was only one house on that; size of that piece of property was 150 feet. Received from Wm. G. Lewis. There were house and stable on it. I afterward erected buildings on it. I don't remember what was the cost of those buildings; one house and stable. I sold it to Wm. M. Hoyt. He assumed the mortgage and gave me $15,000 in cash. I don't remember how much the mortgage was on that property. It was more than $5,000; think it was $25,000. It was assumed when the house was bought of Mr. Lewis. I received $15,000 in one check. I gave $7,500 to the Maxwell estate, $5,000 to release Mr. Page an indebtedness to Mrs. Maxwell, and $2,000 to the Union Oil Company, and $500 I deposited; the Union Oil Co. was a business company in which Mr. Page was concerned; the amount I paid to Mrs. Maxwell was money borrowed—a debt of Mr. Page's; the $7,400 given to the Maxwell estate, Mr. Page was trustee, and the money he

had used, and I replaced; all that I retained out of that $15,900 was $900.

Q. Then it was a debt of his?

A. No.

Q. This $7,400 you say you gave to the Maxwell estate?

A. Yes, sir.

Q. And he was a trustee of that estate?

A. Yes, sir.

Q. Was he indebted to the estate?

A. Yes, sir.

Q. This, then, went to pay a debt of his; is that correct?

A. Yes, sir.

Q. $5,000 went to pay the debt he owed to Mrs. Maxwell; is that correct?

A. Yes, sir. At that time I took a mortgage from Mrs. Maxwell to secure the $5,000 to me; she gave me a deed —conveyed the property to me; I don't remember how the $5,000 to Mrs. Maxwell was paid, or to whom it was paid; my husband did the business; I did not see Mrs. Maxwell in regard to it; did not give her the money or receive the papers from her; did not negotiate with her or have any conference about it; with reference to the money advanced the Union Oil Co., I had personal dealing with a member of that company, with Mr. Page, who was a member of that company. I advanced it to him for the use of that company. I drew a check for that money. I don't remember whether I signed the check. I kept the moneys deposited at the First National Bank in my name. I always signed the checks myself. I don't remember whether I gave my husband a check on the First National Bank for $2,600. I remember the fact that $2,600 was advanced to the Union Oil Co. I took the note of the Union Oil Co. for $2,600; the note signed by the Union Oil Co., by B. V. Page, President.

Objected to.

Q. Where is that note.

A.. At my home. The $7,400 paid the Maxwell estate, was $3,000 South Park bonds and $2,400 notes, I think. I bought those bonds with the money from the sale of the house. I don't recollect how long I held those bonds. I don't recollect whether I ever received any interest on them. I don't think I did. $2,400 was in notes. I can't remember the names now, whose notes they were. Mr. Page got the notes for me. They were notes bought for the purpose of keeping the money drawing interest; I gave this amount to Mr. Page as trustee.

I never kept any account or memorandum of my financial dealings with my husband or these various persons. I kept no memorandum relating to rents, nor any relating to taxes, nor any relating to any business affairs (112). I do not know whether my husband kept any such. I think he showed to me an account between myself and his business affairs; we talked it over. I don't remember whether he ever showed any statement or account of rents; don't remember whether he ever showed any account showing taxes paid on the property on the West Side, or the Erie street property, or the property sold Hoyt, or the property Mr. Mulliken has charge of. I don't remember that any one has shown me any memorandum of those accounts of rents and taxes. Mr. Mulliken has not given me a report or account of his management of property.

I sold the Erie street property for the purpose of getting a better home; and for the same reason I bought the Hoyt property.

(114) Q. *For what reason did you sell the Hoyt property?*

A. Because I wanted to assist Mr. Page with money. There was more money invested there than we could spare.

Q. For what reason was he in need of assistance?

(115) A. *Because he was very much embarrassed in his affairs.*

Q. In what year was that?

A. October, 1877, I think.

Q. *How long had you known of his embarrassment?*

A. *Ever since the panic;* I don't remember what year that was.

Q. It was a fact that he was very much embarrassed ever since the panic?

A. Yes, sir.

Q. That embarrassed a good many of us?

A. Yes, sir. A large house was a very uncomfortable thing to own then.

Q. Do you know the amount of his liabilities in 1877?

A. I do not.

Q. What was the amount of his liabilities that you knew of, after the panic?

A. I do not know.

Q. How much of a load was he carrying, that embarrassed him?

A. I do not know.

Q. Did you know from him at that time?

A. *That he was embarrassed?*

Q. *Yes.*

A. *Yes.*

Q. Lid he talk over his matters at home?

A. *It was always his habit.*

Q. Always gave you to understand pretty much the extent of his burdens?

A. Yes, sir.

Q. Did you know he was in debt $200,000?

A. I did not know the amount. He did not talk about the amount. I did not know anything about it.

Q. *Did his embarrassment, resulting from this load of hard times and liabilities, continue from the time of the panic down until you made the sale?*

A. Yes, sir.

Facts Established.

From this full presentation of the evidence in this case we find clearly established the following facts:

In February, 1875, Page conveyed to his wife a property on Dearborn avenue, worth $45,000 to $50,000 at least, in which he had an interest of $20,000, being indebted to the complainant, and owing $350,000, over $260,000 of which is yet unpaid, and mostly unsecured in whole or in part.

In October, 1877, this property was sold by Page and his wife to William M. Hoyt. Hoyt paid Mrs. Page $15,940, cash, and assumed a mortgage for $30,000, but in subsequent settlement with the holder of the mortgage $5,000 was allowed as rebate or credit on that mortgage, and Hoyt paid Page this further sum of $5,000, making $20,940 by them received in cash for the property.

Of this $15,940 received by Mrs. Page she used $950 and passed the residue to her husband, Page, the debtor, in three sums, viz.:

1. She loaned him $2,600 under name of "Union Oil Co.," one of the names by which he operated, and took notes—$3,000—of that company, by him as president.

2. She advanced him $5,000, with which he paid a debt, $4,515, owing to Mrs. Maxwell, and as security for which she took title to houses in block on Lincoln avenue.

3. The residue of the money, about $7,400, Page held in bonds and notes at time this suit was commenced, and placed the same in First National Bank, to avoid producing them; and this money and bonds and notes he claims he *intended* to apply or hold as administrator of Maxwell's estate, to which he was liable.

And the following propositions are equally clear:

The property sold to Hoyt was conveyed to Mrs. Page while he was indebted to the complainant, the appellant.

It stood of record in the name of Benjamin V. Page, the debtor, from 1869 or early part of 1870 until February, 1875, and while thus standing his debts accrued.

It was in every part the accumulation of his own business—money and capital.

No part of this property was brought to him by his wife. It all came as the result of his money, business and procurement.

That Page was bankrupt in 1872, and thenceforward, is clearly shown in his own testimony, and again in answer to Mr. Burry; and he shows that in 1872 they failed to pay their business paper and renewed it in large amounts from that date until they filed their petition in bankruptcy; and

that out of all the assets they paid only $80,000, to $100,000, and left $260,000 unpaid.

Mrs. Page, in her testimony, gives the history of all these purchases of real estate from 1864 to 1875, in no respect different from the statement of Page, *except that Page says he was the owner of the Dearborn avenue property* in 1869 or 1870; *that he bought it; that he paid for it; that he built the house, which cost $45,000.*

He afterwards says that, after consulting Mr. Isham, he sees that he did not quite understand the force of the questions; that, in fact, he was not the real owner—he only held the title.

Mrs. Page knew all about her husband's bankruptcy as far back as 1873 or 1874.

The Opinion of Mr. Justice Harlan.

(135) We trust we shall speak of this opinion with the respect due a member of this high tribunal; but we must be allowed to say that in some respects it is hard to discover the testimony in this case on which it rests.

a. In that opinion it is stated that "*Mrs. Page's object in* "*the sale to Gregory was with the proceeds to purchase an-*" *other residence.*" No such statement is found in the pleadings or evidence. In fact, the property on State and Erie streets was purchased in 1864, and she says the house sold to Gregory was sold in 1864 or 1865. She says "she don't "remember the exact amount received for that property; "don't *remember whether it was received in money or prop-*" *erty.*" She says she "sold the Erie street property for "the purpose of getting a better home." That may apply

to the residence left after the sales to Gregory and Stark; for they lived on that corner for over five years after these sales, and probably that long before the thought of buying the Dearborn avenue property occurred to them.

b. Again, this opinion says (136) that on the sale to Stark the title to the lots taken in exchange from Stark "was *improperly taken to Page.*" This is not claimed in the testimony or answers of either. It was so taken because it was *so intended*, and no one pretends to the contrary. Page took these lots just like he took the proceeds of the sale to Gregory—*they went into his business as his own money.* We cannot accuse Page and his wife of an "afterthought" in this pretense that the title was thus *improperly taken*, for the reason that they have nowhere suggested that it was so taken.

c. Again, it is stated in the opinion (136) that "*Mrs. Page assumed to discharge an* incumbrance of $30,000 on "the Dearborn avenue property." It is a strong point in this case that B. V. Page not only assumed to pay this mortgage, but did pay $12,000 on it, and *Mrs. Page never has assumed any part of it.*

d. Again (136), Page paid $10,000 in cash to Lewis on the purchase of the Dearborn avenue property, and the opinion finds that this "was paid *through her husband out "of moneys he had received on the sale of the Stark lots and "on the sale to Gregory.*" This, as an inference, might be urged by counsel for appellee, but the court will hardly go so far in their behalf. The foundation is too remote.

e. Again (136), "the title to the Lewis property *was by "mistake taken in the name of Page, the wife supposing all "the time that the title stood in her name.*"

Page says he knew all the time that it was in his name (79), and he all the time thought it an easy thing to transfer it to her, but no one—not even the wife—says that she at any time supposed or believed she held the title.

f. The opinion further says: (136.) "It *certainly was understood by all around her to be her property.*"

We can hardly imagine where the foundation for this suggestion is to be looked for.

Page and his wife certainly knew that he held the title. He was making sales of the property from time to time. He was paying taxes on it. He was collecting insurance in large sums on the houses that were burned and erecting an expensive house on the ground—all out of his own money and business. He kept no account with his wife. She had no account on the books of Page & Sprague out of whose funds and business this was largely done, and and yet it is said that, "*it was understood by all around that it was not Page's property.* By whom so understood?

g. Again the opinion says: (136) *The remainder of that lot, (about 90 feet,)* was in 1875 conveyed to Sprague for the purpose of being conveyed to Mr. Page.

This was not the whole of the remainder. This 90 feet was conveyed one year *before the 25 feet to Willing*, which Page still held, and this shows that he was dealing with this property as his own, just as he pleased.

h. Again it is said (137), that it was so done in "*recognition of the fact that the property really belonged to Mrs. Page,*" —an *inference*, which is sound or unsound, according to the way we look at the facts of this case.

i. Again, with regard to the pretense that these Park bonds and other funds are held by the Maxwell estate, the opinion says: (137) "*She evidently had some fear that his per-*

sonal liberty would be endangered if that deficit in his accounts as administrator was not provided for."

Mrs. Page nowhere says she had any such fear. Page nowhere speaks of any such fear, or even danger, and nowhere in this record is there any suggestion of any such danger.

Moreover, it is now nearly seven years since that sale and the purchase of those bonds. They are yet safely lodged in the First National Bank of Chicago, and Page is not yet in custody.

At the time the appeal was taken in this case, Mr. Isham stated in open court that the estate had no claim on the funds and the bond was taken *at his direction* to Belle F. Page. We forbear to state what has been stated since, by counsel in this case; but we can say that the record in this case shows that Mr. Page gave bonds acceptable to the Probate Court for the moneys he holds as administrator. He also gave a bond to Mrs. Maxwell, his co-administratrix, to indemnify her against any loss and with such bonds as these to protect that estate, Page is safe and will continue safe from any such danger as that suggested in the opinion.

He has had no authority from the Probate Court to invest the funds of that estate in Park bonds or notes, and his co-administratrix has acquired no control over these assets.

The whole claim is an unfounded pretense, and having served its purpose, it is time *now with Mr. Isham* to dismiss it out of the case.

These funds are either the funds of Mrs. Page, or they in equity, are bound by the bill of this judgment creditor.

Of all the facts as brought out in the record with what may properly be inferred therefrom is most convincing and leads irresistably to the conclusion that Page originally conveyed the first property to his wife for safe keeping, he being a large operator and liable at any time to a cramp in business. That he used it and controlled it while so held, just as if it was his own and his wife acquiesced in this control and finally he took the Dearborn avenue property in his own name with her knowledge and acquiescence and used that and sold from it just as it suited him until the crash of 1873 induced him to *cover* from the reach of his creditors, and then he transfered the homestead to his wife, she knowing his insolvent condition.

1. She knew he held the title, or she was so grossly negligent about it as to charge her with knowing and consenting to it. *She does not testify that she did not know it and it is no where claimed that she did not know it.* She joined, as his wife, with *him as owner in his deed*, she releasing dower of part of it to Peck, and thus held him out as the owner.

Page was asked by Mr. Burry, their counsel, when Mrs. Page became aware that the deed was not made to her. (They did not dare ask her that question).

He answered: "My recollection is that *I always had it* in mind to transfer the property." Very likely.

2. But the evidence shows that this property was not regarded as her property at all prior to the transfer to her in February, 1875, and that the transfer was made as a voluntary settlement and not as a transfer of a legal title held by him in trust for her.

Some of these facts are as follows: His paying the cash payment to Lewis out of his own money on purchasing, and his taking and holding the title to himself. Men who do as much business as Page transacted, do not *inadvertantly* make such mistakes as to take title when it should go to another.

His sale of part to Peck, she joining as she did, and he receiving the purchase money and using *it in Page & Sprague's business with her consent.*

His paying the taxes on it as his own,—no separate account. His paying interest on the mortgage as his own, —no separate account.

His assuming to pay the mortgage and paying a large part of it.

His collecting the insurance after the fire of 1871, and receiving credit for it on books of Page & Sprague, with her consent—for the contrary is not claimed.

His building a house costing $45,000; his conveying to her in 1875 only a part and retaining 25 feet, which he at a later date mortgaged to Willing, she also joining in that mortgage of this residue, he receiving the loan for use of his firm *with* her consent the same as if his own.

For none of the moneys received by Page from Gregory, Stark, Peck and Willing and from insurance or other sources, does Mrs. Page receive any credit or any voucher or memorandum, nor does she appear to claim any.

With none of the moneys paid out by Page or Page & Sprague, on any of this property for taxes, for interest, for insurance, for building the house, is Mrs. Page charged. Page was charged on the books of P. & S. for the whole of it. No settlement, and no statement of account is ever made to or with her by any one, relating to any of these matters.

The house was sold finally for Page's benefit, to assist him with money because he needed the money more than they needed the house. Of the proceeds of the sale Page received $20,000, she used $940.

Page did everything that the owner of the property could do as owner, and with her knowledge and consent, and finally he *testified he was the owner* (51), and it took him three years (75 and 76) and the aid of her (or his), lawyer to discover that *he was mistaken*, the only mistake which appears to have been made.

Page's original transfer was intended as a gift to his wife, but it was always his when he wanted to use any of it.

Page was utterly insolvent in 1873—probably before, and it was known to his wife from that date (115), she so testifies.

The Law of this Case.

The Conveyance of Mrs. Page a Fraud as against the Creditors of B. V. Page.

It would have been just as much a fraud had this property really and truly been bought with money of the wife, money not derived from her husband, they allowing it to stand in his name on the records until his debts had been contracted.

An After Thought and False Pretense.

This whole case is one of those after thoughts and false pretenses which was justly characterized by this court in the case of *Humes* v. *Scruggs*, 94 U. S., 22, where the court

holds that; "If the money which a married woman might have had secured to her own use, is allowed to go into the business of her husband, and be mixed with his property, and is applied to the purchase of real estate for his advantage, or for the purpose of giving him credit in his business, and is then used for a series of years, there being no *specific* agreement when the same is purchased that such real estate shall be the property of the wife the same becomes the property of the husband for the purpose of paying his debts. *He cannot retain it until bankruptcy occurs and* then convey it to his wife. Such conveyance is in fraud of the just claims of the creditors of the husband, citing,

Fox v. *Meyer*, 54 N. Y., 125, 131.

Savage v. *Murphy*, 34 Id., 308.

Babcock v. *Gokler*, 24 Id., 623.

Robinson v. *Stewart* 10 Id., 190.

Carpenter v. *Roe*, Id., 227.

Hards, Lessee v. *Longworth*, 11 Wheat., 199.

This court in the above case says:

"But it is probably untrue, in fact, that this land was "bought for her as she alleges in the answer, or that she "*believed at any time* that the title was taken in her name "* * * * We cannot but suppose *this to be an after-* "*thought.*"

The cases of *Hockett* v. *Bailey*, 86 Ills., 76; *Catherwood* v. *Watson*, 65 Ind., 576; *Brooks* v. *Shelton*, 54 Miss., 353; *Miller* v. *Payne*, 4 Bradwell, 118; *Keating* v. *Keefer*, 5 Bankrupt, Reg. 133; *In Re. Rainsford*, 5 Id., 381, and the cases therein cited, show conclusively that *if Page held this property for four or five years standing in the records in his name, and while thus held he became indebted in large amounts and insolvent, as against his creditors of that period, he cannot con-*

vey the property to his wife, that she can have no equity in it, and no power to receive or control the proceeds and avails of the same.

In *Hockett* v. *Bailey*, supra., Mr. Justice Craig delivering the opinion of the court, says:

" It is true, the tract of land conveyed to Youngman, for " which the money involved in this litigation is due and ow- " ing, was, at the time of the conveyance to Youngman, in " the name of appellant Julia E. Hockett; but she, as ap- " pears, acquired the title from Antrim October 4th., 1881, " who sold the land to Pleasant Hockett, and the consider- " ation for the conveyance to her was a deed of a certain " tract of land owned by Pleasant Hockett, which he con- " veyed to Antrim. If Pleasant Hocket, the husband, at " the time he procured this land to be conveyed to his wife, " had been free from debt, or if he had retained in his own " name sufficient property to liquidate all his indebtedness, " the transaction might have been sustained; as a settlement " upon the wife, and in such case she might have held the " same manner as if she had acquired it by descent or pur- " chase with her own separate property; but it appears, " when the husband had the land conveyed to her, he was " indebted to appellee on a claim upon which the attach- " ment was commenced, besides being indebted to others, " under such circumstances the husband could not, in defi- " ance of the rights of his creditors, settle his property upon " his wife."

" *But it is said the money which paid for the property origi-* " *nally, came to the wife from her fathers estate, and she is* " *entitled to be protected on that account.* Julia and Pleasant " Hockett were married in Ohio, in the year 1858, at that " time he had little or no property, and his wife secured " from her fathers' estate about $1,100, soon after the mar-

" riage a farm was bought, held for a while, sold, and anoth-
" er bought. This occurred several times in Ohio, until
" finally, in 1868, this farm thus owned, was traded for a
" farm of 200 acres in Iroquis county, in this state. *All of this*
" *business was transacted in the name of the husband; each*
" *purchase was, so far as shown, made by him, and in his*
" *name during the entire 10 years from the time of the mar-*
" *riage in 1858, until the purchase of the Bailey farm in*
" *Iroquis county, in 1868, the husband had the money and*
" *used and invested it in the same manner as if it was his*
" *own.* Soon after the purchase of the Bailey farm he con-
" veyed it to Mrs. Rowe, and she on the same day conveyed
" the property back to the wife; but this was done, as the
" evidence tends to show, to avoid the payment of appel-
" lee's debt which was then held by another party. But
" after this transfer, the husband used and treated the prop-
" erty as his own; and subsequently sold it for other prop-
" erty the title to which was taken in his own name. If it
" had been the intention and purpose of the wife to retain
" the money derived from the father's estate as her own
" separate property, free from her husband, when the land
" was bought, it should have been purchased in her name,
" or, at least, some plan should have been adopted, by
" which the public would have had notice that the property
" purchased belonged to her, and not to her husband."

In *Wortman* v. *Price*, 47 Ill., 22, it was held, where the wife advances capital to the husband with which he engages in trade, such capital and its fruits in the business will be subject to the debts of the husband. The same doctrine was again announced in *Patton* v. *Gates*, 67 Ill., 164. The principle of those cases is applicable to this one. Here the husband had the wife's money; he invested it in a farm in his own name; increased the capital, sold and reinvested. Now, while it may be true, if this was a controversy solely

between the husband and the wife as to the ownership of the property, it might be held that the wife might recover; *yet when the rights of creditors of the husband intervene, a different question arises.*

The husband, no doubt, obtained credit on the faith that the capital he was making belonged to him. He used the *capital of the wife in his own name, with her consent, and she cannot now interpose her claim as against the creditors of the husband.*

In *Catherwood* v. *Watson*, 65 Ind., 576, the husband held title to land bought with the money of his wife, she not knowing that the title was held by the husband. The husband was accepted replevin bail on a judgment in favor of Catherwood, who sought to hold the land, and the court, Perkins, J., in delivering the opinion, says (579):

" One who gives value or changes his position for the " worse, In reliance in good faith upon the appearance of " things, as to the title of property, or extends the time for " the payment of an existing debt, stands in the position of " a purchaser or creditor for value. 2. Leading cases in " equity, Pt. 1, P. 32. *Brown* v. *Budd*, 2 Ind., 442."

In *Miller* v. *Payne*, 4 Brad., 118, the husband had several years previously borrowed from his wife $1,700, and after incurring debts he conveyed to her real estate. That case says:

" We may take it then as established by the statements " of the defendants in their answer, that the considerations " and only considerations for the deed in controversy were " three: The $1,700 loaned on or before 1863, by Delia L. " Payne to her husband; the waiver of the homestead right " of Delia L. in the other lands of her husband, and the " waiver of dower in these other lands." * * *

In *Wortman* v. *Price*, 47 Ill., 22, and in *Patten* v. *Yates*,

66 Ill., 164, it was held that where the wife advanced capital to the husband with which he engaged in trade, such capital and its fruits in the business will be subject to the debts of the husband. In *Hockett* v. *Bailey*, the circumstances of the case were very similar to the circumstances of this. * * * * ** *

Here the wife loaned money to the husband 15 years or more before the execution of the deed, which he applied to the payments of debts which were liens upon his real estate. *This real estate then stood and continued to stand these 15 years in his name, and during that time he erected a dwelling house and other valuable improvements upon the land with his own means; and for 20 years or more, before and after the loan, he held possession and dealt with the lands as his own, and contracted debts on the faith of such ownership. We regard the case cited as conclusive upon this branch of the alleged consideration.*

The Supreme Court of Illinois has said in several cases, as in *Wilson* v. *Loomis*, 55 Ill., 352, *Wortman* v. *Price*, 47 Ill., 82, *Patten* v. *Yates*, 67 Ill., 164, that when the wife advanced capital to the husband with which he engaged in business, such capital and its fruits in the business will be subject to the debts of the husband.

In *Sweezey* v. *Damron*, 47 Ills., 455, the court says: " When a husband, not in debt, in good faith conveys prop-" erty to a trustee for the use of his wife, or purchases " property and has it conveyed to her, the transaction will " be sustained, although the consideration for the purchase " was from his own means. And when the husband has " received funds belonging to the wife and invested them " for her, in her name, or subsequently conveyed to her, " courts of equity treat the transaction as fair, and will sus-" tain it as against subsequent creditors. *When creditors " are not misled by the title standing in his name, they have no " right to complain.*"

In a case like the one at bar, where the debtor held so large or valuable a residence, living in the same, a house which cost $45,000, and holding the same of record in his own name for five years, and during that time is accepted by the courts as surety on bonds and contracts debts of over $300,000, it must be held that his style of living in so valuable a home, and his having the same in his own name on the records, was a part of the basis of his credit; besides, it is shown he paid the taxes on this property, paid $7,000 on the incumbrance, and in addition $5,000 more was allowed as paid on the incumbrance by reason of glass, paints, etc., furnished by Page & Sprague to the Connecticut Mutual Life Insurance Company.

The reputed owner being also an operator in real estate and an extensive dealer, and being trusted with large sums of money, the law will indulge the presumption that he received credit on account of the holding of this large and valuable property, and he cannot now convey this to his wife on any such pretended consideration.

The case of *Brooks* v. *Shelton*, 54 Miss., 353, is in point and casts much light on this case. A statute of that state declared, "If the husband shall purchase property in his "own name with the money of the wife, he shall hold the "same only as trustee for her use;" and these words were added: "But such trust shall be void as against creditors "of the husband who contracted or gave credit in conse- "quence of the possession of such property, without notice "of the trust." And the court asked: "What is the mean- "ing of this limitation on the rights of the wife?"

The court said: "To require the creditor to show that "in each case the extension of credit by agreement between "himself and the husband was based upon some specific "piece of property, is either to nullify the statute or to de- "mand that in each case a mortgage must be executed."

And after stating the position and extensive business operations and high social standing of the debtor, the court said: "*Under these circumstances, there can be no question* "*that his creditors contracted with him on the faith and in* "*consequence of the property which stood in his name, and* "*that, consequently, his wife has no right which can be as-*"*serted against them.*"

The case presented by Mr. Burry from 98 Ills., *is quite different from that presented in this record* (93). The concluding sentence in that opinion sets it right: "This is not "a case of a debtor conveying his own estate to his wife "to prevent creditors from seizing it." 98 Ills., 47.

In that case an error had been committed in a partition suit, which was notice to all parties of the wife's rights, by which the wife's property had been set off to herself and her husband, and the wife had the error corrected by a conveyance which restored the land entirely to the wife. It is no authority in this case at all. In that case the record showed the error, which was properly corrected.

MRS. PAGE THOUGH A BONA FIDE CREDITOR OF PAGE, IS POSTPONED TO THE CLAIM OF APPELLANT, BY HER CONSENTING TO THIS USE OF HER PROPERTY IN HIS BUSINESS.

If the property on State and Erie streets had been the property of Mrs. Page, purchased with her own money, yet had she by her *consent allowed her husband for several years to use the proceeds thereof in his business* and purchase other property in his own name and hold the same and while so held he became indebted to the appellant, she can not claim any part of such property or the proceeds thereof as a creditor of her husband, as against the appellant who trusted him on the credit of his being the owner of all this property. Such is the law as held in all the cases cited.

To sustain the opinion of the court below, is to hold at variance with every case in the reports.

In her answer, which is by her solicitor, and not sworn to, and in her sworn testimony, she nowhere intimates that Page used these proceeds in his business *without her consent. She shows that she consented to every act.*

In each of the cases before cited of

Humes v. *Scruggs*, 94 U. S., 22.

Keating v. *Keefer*, 5 Bankrupt Reg., 133.

In Re Rainsford, 5 Id., 381.

Hockett v. *Baily*, 86 Ill., 76.

Catherwood v. *Watson*, 65 Ind., 576.

Miller v. *Payne*, 4 Bradwell, 118.

Brooks v. *Shelton*, 54 Miss., 353.

There was a real antecedent debt due to or an advance made by the wife *from moneys not derived from her husband*, yet the courts in each case held that such claim must *be postponed to that of the creditors who had trusted the debtor on the faith of his holding property upon the records as his own and who had no opportunity of knowing otherwise*, while in each case the wife, although a real and a meritorious creditor, had actual knowledge of his situation and was to blame for not asserting her rights unequivocally before those other debts had accrued.

The Maxwell Claim.

It is shown that Page was not the sole administrator (1 on page 134) of the Maxwell estate. Mrs. Maxwell was his co-administratrix, and it is not pretended that these funds were ever under her control in any way.

Further it is shown that Page gave acceptable bonds (3 on page 134) as such administrator, and that for the use of these moneys of the estate, he gave Mrs. Maxwell, his co-administratrix, a bond (5 on page 134) of indemnity, in the sum of $10.000, with security.

This pretense that the money in bank is held by the estate of Maxwell, is clearly shown to be a fraud by the fact that it is not under the control of that estate, or the co-administratrix, and has never been. Mrs. Page gave this money to Page, as he claims, to pay his debt to that estate, but he has not paid it, until the other administratrix has some claim upon the exact funds, or some right to control the same; but she has never had any such control.

The claim of the estate to the fund derives no weight from the fact, as alleged, that Mrs. Page gave it to Page for that purpose, for she had no disposing power or control over it.

The evidence shows that Page used money of the Maxwell estate in his business. *That he used it on his individual account;* so he states in the condition *of the bond he gave Mrs. Maxwell*, and that he has given Mrs. Maxwell bond and security for the repayment of that money. *The estate has bond and security also;* but Page being found by the process of this court, with money and cash assets, bonds and notes in his possession, and under his control, which were the proceeds of that Hoyt check, he rushes off to the bank and deposits the same (*as he fixes it*), subject to the order of Judge Drummond and the judge of the Probate Court. *It was a trick to evade the process of this court.*

Page claims that this $7,400 of bonds and notes was held by *an* administrator of the Maxwell estate. It is shown that he used the money of that estate. By what is it shown that the Court of Probate authorized him to invest the

funds of that estate in bonds and notes * * * The receipt given by First National Bank for the assets deposited was given to B. V. Page, *an* administrator (133) of the Maxwell estate, not to *the* administrator. The intent of Page was obvious. He did not want the deposit to be under the control of the estate or his co-administratrix, or any other but himself.

But it is said that it was handed over to him by his wife to put into that estate; he held it, *as he would say, with the intention* of using it in that way. That is the most that can be claimed. But his *intention* was not carried out, and *non constat* that it ever would be. There was no way of enforcing that application. *Mrs. Maxwell could not enforce it. No one could.* The bonds were *under his control perfectly. He could pay Mr. Moore's debt* or *any other.*

But we enquire, who is it that seeks the aid of this court to protect the Maxwell estate? It is not the heirs, or the administratrix. It is no creditor of that estate, *but Mr. Page himself*, who is the debtor, who wants to be left undisturbed in the possession and control of his own assets, which have come from the sale of his own property.

It is a rule that courts do not go out of their way to protect those who do not seek protection. It is enough that this court protect the creditors of Page, who have sought the aid of this court, and do not join Page in his attempt to place the proceeds of this sale to Hoyt, beyond the reach of those creditors who trusted him on the credit of his ownership of that property.

Again this pretended appropriation appears from the evidence, to have been like his gifts to his wife,—never placing anything beyond his own control.

Moreover this original bill was filed in this case, which gave a lien on all the equitable interest of Page, six months

before the sale to Hoyt, and the bill of Moore within three months thereafter, and we ask what right had he to appropriate these assets, after the filing of either bill?

He kept these bonds and notes in a drawer (71) at home, and made no appropriation of them, nor did he disclose that he had them until on the witness stand the discovery was forced from him, and he is ordered by the court to give bond and security for their surrender to meet the equitable claim of this suit, when he rushes off to the bank and deposits them, as *an* administrator. Too late to make any such appropriation. A court of equity already had its hand upon them.

The following authorities are submitted as *decisive* of the *pretense* that the funds in bank are held by the estate of Maxwell.

Funds held by Page and not deposited in his official capacity as administrator, are not under the *control* of or at the *risk* of the estate. If the bank fails the loss is *his individual loss*, not that of the estate.

Hill on Trustees, 376.

Baskin v. *Baskin*, 4 Lansing, 90.

Commonwealth v. *McAllister*, 28 Pa. St., 480, and and S. C., 30 Pa. St., 536.

In the latter case, 30 Pa. St., 536, the court say: " If he " undertakes to make a deposit in a banking institution the " entry must go on the books of the institution in such " terms as not to be misunderstood that they are the funds " of the specific trust to which they belong. He cannot so " enter them as *to call them his own to-day*, if they are good, " and to-morrow, if they are bad, ascribe them to the estate; " or shift them in an emergency from one estate to another, " or by the deposit secure the discount of his own note, " and have the deposit snatched at by the bank if the note

" be not paid, or *attached* by a *creditor* as the depositor's
" individual property. *Jackson* v. *The Bank of the U. S.*,
" 10 Barr, 61, which has never been shaken, makes this
" last risk to the estate one of vast magnitude; for as
" against an attaching creditor it constitutes the deposit the
" the property of the depositor whose name it bears, and
" prevents, from motives of legal policy, an explanation of
" its true character." 10 Barr, 61.

To be under the control of the estate they must be where they are at the risk of the estate.

3 Redfield on Wills, 394–395.

In this Page case the funds did not come from the property of the estate.

They were not held in the name of the two administrators. The co-administratrix had no control over them—could not even claim the funds for the estate.

The facts were: Page held these funds in his individual capacity, and was at liberty to use them as he liked—to pay a debt, or to engage in new speculations—his *most probable design*.

The lien of a creditor's bill attaches *at once*, when suit is begun.

First Nat. Bank, Sioux City, v. *Gage*, 93 Ill., 172.

If this fund equitably belonged to Mrs. Page she had the right to apply it where she liked. If in equity it belonged to the creditors of B. V. Page she had no disposing control over it, and Page's claim that he *intended* it to replace this deficit to the estate was no more than an *intention or expectation to apply it on one* of his many liabilities. It had not been so applied while he held it under his exclusive control, and it is apparent his *real intention* was that it should remain under his exclusive control. The power of a debtor

to declare a preference ceases when a court of equity asserts the right to control the disposition of his assets.

In *First National Bank* v. *Gage*, 93 Ill., 174, the court says: " *The filing of a creditor's bill, or at least the service of* " process *gives the complainant a lien* upon the property of " the judgment debtor, *by placing it under the control of the* " *court, which will not suffer it to be withdrawn by any* " *subsequent act or title.*"

The following cases also hold that a creditor's bill creates a lien in equity:

Scott v. *McMillan*, 1 Litt., 308.
Lucas v. *Atwood*, 2 Stewart, 378.
Gordon v. *Lowell*, 21 Maine, 251.
Storm v. *Waddell*, 2 Sand. Ch., 513.
Brozen v. *Nichols*, 42 N. Y., 26.
Tilford v. *Burnham*, 7 Dana, 110.
Rockhill v. *Hanna*, 15 Howard, U. S., 189.
McCalmont v. *Lawrence*, 1 Blatch., 235.
Edgell v. *Haywood*, 3 Atk., 352.

The case of *Ocean National Bank* v. *Olcott*, 46 N. Y., 12, meets the equity of this claim on the part of Page, *an* administrator, and also the claim which is put forward by the counsel and seemingly recognized by the opinion of Justice Harlan, that Mrs. Page is also a creditor and entitled to be allowed so much balance due her for the proceeds of her property sold by her husband.

Speaking of the lien which creditors had upon a debtor's property and assets, the court, Church, Ch. J., said: " Al- " though there may be some apparent confusion from the " use of terms, we do not think the interest of the creditors " constitutes a lien within the meaning of the bankrupt act, " nor in any such legal sense as to give creditors a priority " except by means of the equitable remedies. * * *

" In some general sense creditors have an equitable lien up-
" on the property thus situated. * * * So debts
" are equitable liens on property fraudulently transferred by
" a debtor, and it may be said that every debtor is a trustee
" for his creditors, and bound to use his property for their
" benefit, and that creditors have an equitable lien upon the
" property of the debtor. But in all these cases the usual
" remedies are to be pursued to create and enforce the lien
" before a specific charge constituting an incumbrance is
" created. * * * A creditor at large cannot
" enforce the liability without a preliminary judgment and
" execution, etc."

Objection to Page's Testimony.

While it comes with bad grace, there is nothing in it. It was commenced January 21, 1878, after Mrs. Page was made party and served with process January 11, which is the practice in Illinois.

Ball v. *Leonard*, 24 Ill., 146.

January 22—Mrs. Page's counsel were present and at every portion of the testimony afterwards, and took part and assumed the real charge of the defense, and cross-examined Page as to all the matters of the case, abounding in repetitions in every part—all signed and sworn to as one deposition, examination and cross-examination.

But exclude Page's testimony and let Mrs. Page's case rest on her deed from Page for no consideration but $1.00, in the face of our judgment and debt going back to 1872, and his insolvency as shown by abundant testimony, and where does she stand? The learned judge who heard the case below did not see that she could safely make any objection to the testimony of her husband.

Objection to Documentary Evidence.

The documentary evidence offered, including transcript of judgment, and the oral testimony to prove the documents, was admissible at the hearing. It was always admissible to that extent.

2 Daniels Ch. Pr. Perkins Ed. 879.

But under the present practice in chancery, of taking oral testimony at the hearing, as in cases at law, any testimony is admissible at the hearing in the discretion of the court, if not as of right as held in *Maher* v. *Ball*, 39 Ill. 538, *Grab* v. *Cushman*, 45 Ill. 119. And the U. S. equity rules expressly provide that nothing therein contained shall prevent examination of witnesses at hearing, if court shall deem it advisable. Rule 78.

Nothing however but extreme technicality would have required the transcript of the judgment. The execution itself and the return of the sheriff being included in the Master's report of evidence. (119)

The defense of a fraud often exhibits a tender regard for the technicalities of procedure.

Moore's Judgment not in the United States Court.

It may be objected in this case that the judgment on which Moore's cross-bill was filed was obtained in the Superior Court of Cook County, in the Northern District of Illinois, and not in the court in which this equity suit was brought.

This objection was not raised at the hearing, nor at any stage of the case in the court below, the question having occasionally been raised in that court in other cases and uni-

forably held by Judge Drummond in accordance with the holding of Judge McLean in 6 McLean, 18, that such a judgment served the full requirement of the rule in equity, "that the creditor must exhaust his remedy at law;" and that thereupon the court of equity had full jurisdiction—not by force of the statute which authorized the filing of creditors' bills in equity, but by virtue of the equity powers of the court of chancery, the statute being only a reaffirmance of a previously existing equity rule, as held in *Chautauqua Co. Bank* v. *White*, 2 Selden, 252.

Such question was raised in the Supreme Court of Illinois, in *Steere* v. *Hoagland*, 30 Ill., 266, and upon a mere *obiter* suggestion of a doubt, the reporter has inserted a syllabus to the effect that a bill cannot be maintained in a state court on a judgment of an United States court; but the court decided no such question.

In *Turbell* v. *Griggs*, 3 Paige, 207, the chancellor raised the doubt, but in the same case said "that he was not pre-
" pared to say that his court might not on a principle of
" comity interfere to aid the *parties in the collection of a*
" *judgment of a court of the United States, or of a sister*
" *state, upon any sufficient grounds of equity appearing on*
" *the face of the bill to show that the exercise of such a juris-*
" *diction was necessary to prevent a failure of justice.*"

The New York Court of Appeals, in *McCartney* v. *Bostwick*, 32 N. Y., 63, quotes the above language, and adds:
" It seems to be fairly inferrable from these remarks of the
" chancellor that he would have retained the bill in that
" case if it had appeared to have been one where the com-
" plainant had no remedy at law in the courts of this state.
" *But if it be essential to jurisdiction in this case, I am pre-*
" *pared to go further, and hold that the remedy of the plaintiff*
" *at law has been exhausted in this case within the true mean-*

" ing of the rule. So far as the effect of the judgment is to " establish the indebtedness, it has been accomplished by the " judgment recovered in Minnesota. That judgment appears " to have been recovered upon personal service. It is equally " conclusive upon the courts of this state as to the existence of " the debt and its amount, as a like record from our own " courts would be."

The same court, in the case of *Chautauqua Co. Bank* v. *White*, 2 Seld., 252, said that " the common law powers of " the court (of chancery) in reference to fraudulent trusts " and conveyances are not touched by these provisions "— the statute which authorized a creditor's bill on the recovery of a judgment and return of an execution unsatisfied. " They add: Fraud and trust were familiar heads of equity " jurisdiction, independent of the statute." *Ibid.*

This proceeding not necessarily auxiliary to the judgment at law, but is an independant right of equity.

This whole contention has arisen from the claim that the creditors' bill is an auxillary proceeding, and a continuation of the suit at law.

In the states adopting the code of practise it is provided for as a *supplemental* proceeding, and in such case it is an auxillary proceeding, and a continuation of the suit at law, but it is not necessarily so, as held in the case above cited from 2nd Selden, 252 and 32 N. Y., 63.

As was said by Mr. Justice McLean, in *Lorman* v. *Clark* 2 McLean, R., 578, " it is a characteristic of a court of " equity to regard substance more than form. Having " jurisdiction of a subject matter, in the language of the " late Chief Justice Marshall, *it will exercise it upon its own " principles.* * * * *And we are also of the " opinion that the bill is sustainable on the general principles*

" *of equity, independently of the statute. It would indeed be* " *a reproach to the administration of justice, if a debtor* by " converting his estate into choses in action or stocks, or, " *if his estate consisted of such property as cannot be reached* " *by an execution, he should be able to hold it in defiance of* " *his creditors.*"

Now in this case the assets of Page & Sprague were already bound by the equity suit, they were already in the hands or under the control of this court of chancery, and Moore was a defendant to that suit; he had his rights under his judgment and he could only present them by cross-bill.

In the case of *Steere* v. *Hoagland*, 39 Ill., 266, when the doubt was suggested, the court said: " but when the fund " is only accessible to a court of chancery and cannot be " reached at law, and when the debtor is diseased, creditors " may resort to chancery in the first instance without having " first recorded a judgment at law."

In this case any proceedure in the state court would have been nugatory. The court below had jurisdiction and control of the fund as well as of all the parties.

But the practice in the circuit where Judge Drummond presides, by whose leave this cross-bill was filed, has uniformly sustained a creditor's bill on such judgment.

The court in *Wilkinson* v. *Vale*, 6 McLean, 18, settled the question for that circuit, and that rule has been followed in several cases. The court, McLean, J., says: " The facts, (re- " ferring to the compliance with the statutory and equity " rule, as to the exhausting legal remedies) are sufficiently " established by the record of either court." 6 McLean, 18.

This is the only sound doctrine, and it is time that the vicious doubt thrown out in *Turbill* v. *Griggs*, 3. Page 207, was set at rest. The creditor's bill in equity *is a separate*

suit in chancery and not a continuation of the suit at law. The supplemental proceedings under the code may be the latter, but a separate proceeding in chancery is not, for it may be in a different court,—in the same county as in Chicago—where we can have a Circuit Court and a Superior Court, each of co-ordinate jurisdiction, or in a different county or circuit, of the same state, or as the court of appeals of New York says in the 32 N. Y., 69, in a court of another state entirely. The equity basis of the proceeding is found in the fact that the creditor has by a judgment at law and an execution returned unsatisfied, shown that he has exhausted his legal remedies.

The Attempted Impeachment of Moore's Judgment.

The attempt to discredit the judgment of Mr. Moore rests solely on the testimony of B. V. Page, a man who is covered by fraud and falsehood all through this record. Counsel for Mrs. Page say that she contends that the acceptance of a deed from Page by Moore merged and extinguished the debt. But Mr. Moore never accepted the deed. When he was fully informed on that matter he openly repudiated the whole affair.

Page's answer to the original bill, before Moore filed his cross bill says: (14) "That the said deed was made be-
" cause the property was only worth the mortgages, as it
" had declined in value, and the quit-claim deed was exe-
" cuted in hopes that Moore would release the notes which
" defendant understood Moore had agreed to do." In his testimony he says: "I don't know whether I informed
" Mr. Moore. I think Mr. Eames informed Mr. Moore of
" the transaction."

What has Mrs. Page to say, or what has Page, the judgment debtor, to say, after a judgment which stands unquestioned and unassailed?

But let us examine this falsehood and see on what ground it rests. Mr. Eames, a banker of Chicago, holding a large lot of the paper of Page & Sprague and having opportunities to know their insolvency, induces Mr. Moore, who lives in Michigan and has a deposit of $20,000 in Eames bank to relieve Eames to the extent of $18,000 of this paper. Eames agreeing to guarantee the loan, but afterwards while Moore is sick, gets possession of his letter making such offer, and then advises Page, as Page says, to give Moore a deed of the mortgaged property. Page puts the deed on record, without consulting Moore, and without Moore's knowledge or consent. When knowledge of the transaction came to Moore he repudiated the whole matter, foreclosed his mortgage, and sold the property for all that it was worth, at public sale, and brought suit, not by warrant of attorney, but by service of summons in regular way, and obtained his judgment, and that record is conclusive unless it has been satisfied by something since that date.

Testimony of Horace D. Moore, complainant in cross-bill in this case (118):

Am a creditor of Benjamin V. Page and William Sprague. They owed me those notes October 12, 1872; three notes for $6,000 each, dated October 12, 1872; one payable in one year after date; one in two years after date; and one in three years after date; offered in evidence and identified by witness. They were given for a loan of money, secured by trust deed on land; the loan was made through Mr. Eames, President of the Commercial National Bank; I think the indorsements on the notes show correctly the payments, and all payments made upon them; they have

never paid me anyway the full amount of those notes; judgment was rendered in my favor for the balance. (Objected to). Nothing has been paid on that judgment; they reduced the debt by payments and by the sale of the land down to $14,000; the land sold for about $5,000; after that it left $14,000; the judgment was recovered after the sale of the land; nothing whatever has been paid to me on the judgment.

There was then offered in evidence, and objected to, an execution issued from the Superior Court of Cook County in favor of Horace D. Moore against Benjamin V. Page and William Sprague, dated Sept. 14, 1877, on a judgment recovered Sept. 5, 1877. Amount of damages recovered, $14,000; execution issued for $14,007.50. Returned on the 12th day of December, 1877, by the Sheriff of Cook county, no property found, and no part satisfied.

Objected to, by Mr. Burry.

The transcript of the judgment also appears in the record, and we shall not cite authorities to this court to show that this judgment concludes Mr. Page and his wife also. It cannot be questioned by an alleged fraudulent grantee of the judgment debtor, nor by that debtor himself, except by way of a cross-bill in a direct proceeding to cancel the same.

As to Mr. Moore having done this by advice of counsel in this case, the falsehood rests on the sole testimony of Page, who did not discover that he had sworn falsely as to the ownership of the Dearborn avenue property until the lapse of three years, when his testimony was revised at the suggestion of the counsel who make this charge.

The imputation, not previously noticed, is unworthy any respectable lawyer, and could only be invoked in aid of an unmitigated fraud.

Conclusion.

And now having shown, as we think, by the evidence in this case, that the conveyance of the Dearborn avenue property in February, 1875, by Page to his wife was, as against the claims of the appellant, a judgment creditor of Page & Sprague, fraudulent and contrary to equity; and that the funds deposited in the First National Bank of Chicago by Page, the debtor, are part of the proceeds of the sale of that property to Wm. M. Hoyt in October, 1877; and that another part of such proceeds was paid to Mrs. Maxwell and is represented by the so-called mortgage of Mrs. Belle F. Page on the Lincoln avenue block, which is the property of the judgment debtor; and that the pretended lien of Mrs. Page on such property is also contrary to the equitable rights of the appellant; and that the alleged claim of the Maxwell estate on any part of this fund is a pretense false in fact, and having no foundation in law or equity; and that all of the said funds thus traced are in equity bound by the lien and equity of this judgment creditor's bill in chancery—we respectfully submit that the decree of the court below should in every part be reversed, and that the appellant Horace D. Moore, who has sustained the expense of this suit in the court below and of this appeal to this court, should, as the just and equitable fruits of his diligence and expenditure, be awarded a prior claim on all of the said assets and interests, bound by the equitable jurisdiction of the court below in this behalf.

All of which is most respectfully submitted.

H. T. HELM,

Counsel for Horace D. Moore, Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1883.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1883.

ALFRED WHITE, ET AL.,	*Appellants,*	Appeal from the U. S. Circuit Court, Northern District of Illinois.
vs.		
BELLE F. PAGE, ET AL.,	*Appellees.*	

To Alfred White, Esq., and to John S. Miller, Esq., his solicitor:

You are hereby notified that on Monday, the twenty-sixth day of November, A. D. 1883, we will submit to said court in said cause the following motion and suggestions in support thereof.

E. S. ISHAM and
WM. BURRY,
Solicitors for Belle F. Page, one of the Appellees.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1883.

ALFRED WHITE, ET AL., *Appellants,*
vs.
BELLE F. PAGE, ET AL., *Appellees.*

Appeal from the U. S. Circuit Court, Northern District of Illinois.

And now comes said appellee, Belle F. Page, by her solicitor, E. S. Isham, and moves the court that this appeal be dismissed as to the said appellant, Alfred White, for the following reasons:

1. For the reason that no counsel has entered his appearance in this court for said appellant, White, in accordance with the third clause of the ninth rule of this court.

2. For the reason that it appears from the record that the claim of said appellant, White, in this cause, amounts to less than three thousand dollars, and that said claim is distinct in its nature, and not in any way connected with or dependent upon the claim of said appellant, Moore, and therefore this court has no jurisdiction of the claim of said appellant, White.

E. S. ISHAM and
WM. BURRY,

Solicitors for said Appellee, Belle F. Page.

SUGGESTIONS

IN SUPPORT OF THE FOREGOING MOTION TO DISMISS THIS APPEAL AS TO APPELLANT, ALFRED WHITE.

MAY IT PLEASE THE COURT:

The first reason on which our motion for dismissal is founded appears sufficiently on the face of the record.

We wish to make the following suggestions in support of the second reason given for our motion:

This was a creditor's bill commenced by Alfred White, to discover any property the defendant Benjamin V. Page might have, and to subject it to the payment of a certain judgment in favor of said White, and against the appellees W. E. Wheeler and Benjamin V. Page. The judgment was recovered against Wheeler and Page at the March term, A. D. 1877, for the sum of $1,991.28. Six per cent. interest reckoned on that amount would produce a debt at the present time of about $2,700. This was a judgment rendered against Page in his individual capacity, and not as a partner. The bill, filed May 15, 1877, was voluminous, and sought discovery concerning a great many transactions and pieces of property. The complainant, however, was unable to prove anything concerning them, and none of the matters alleged in the original bill of complaint have ever been pursued or in any degree

enter into the decree, or are now in controversy in this case.

On December 28, 1877, the appellant, H. D. Moore, having been a defendant to the original bill, filed an answer, and on January 3, 1878, filed a cross-bill. Moore claims to be a judgment creditor to the amount of $14,000 against the firm of Page & Sprague, of which the defendant Benjamin V. Page was once a member. In this cross-bill a conveyance of certain property never related to the partnership, by appellee, Benjamin V. Page, to his wife, was attacked as having been made in fraud of creditors. On the same day White, the original complainant, amended his bill by bringing in the property so conveyed by B. V. Page to his wife, and making Mrs. Page a defendant. The controversy in the cause dwindled down to the single issue, of whether or not this last subject matter was in fraud of creditors, and whether or not the complainant and cross-complainant were entitled to the property so claimed by them to have been fraudulently conveyed, or to the proceeds thereof.

The court found that the conveyance was not made in fraud of creditors, and a copy of the opinion delivered by Mr. Justice HARLAN will be found attached to these suggestions as showing the state of the case.

Under these facts we contend that the claim of White is a distinct and separate claim involving less than $3,000, and that therefore the appeal must be dismissed as to said appellant, White, in accordance with the cases, *Ex parte Baltimore & Ohio R. R. Co.*, 106 U. S., 5, and *Farmers' Loan & Trust Co.* v. *Waterman*, 106 U. S., 265.

This case does not come within the exception noted in *Ex parte Baltimore & Ohio R. R. Co.*, where the contro-

versy is "about matters in which the several claimants "were interested collectively under a common title." In this case the claims of the two appellants are distinct and of a different nature. The claim of Moore is a partnership debt against the firm of Page & Sprague. The claim of the appellant, White, is an individual claim against Benjamin V. Page, and in its opinion the court finds that Belle F. Page has also an individual claim against the estate of Benjamin V. Page. Any recovery had in this cause by either of these appellants, will be to the detriment of Belle F. Page. She will have to respond to any such decree, and the success of one of these claims does not at all involve the success of the other. It may be that White has a good judgment, and one that can be enforced against the individual estate of Page, while the judgment of Moore may have been obtained fraudulently, or after the debt was satisfied (as in fact we claim it was). In any event, it is primarily a partnership debt. The case might result that White would be entitled to a decree of about $2,700 against Mrs. Page, and Moore be entitled to nothing. In like manner it might be that the claim of Moore would be sustained and the judgment of White defeated for want of jurisdiction in the court pronouncing it.

We submit, therefore, that the claims of these two appellants are wholly distinct and not in any way dependent on each other. They are not the certain distributees of a common fund, the amount of which is in issue, and Mrs. Page's liability to one is not gauged by her liability to the other. The more she can lessen or defeat their claims, or either of them, the more she can retain. Under the authority of the two cases above cited, and other cases of like nature decided at the same term, we claim, therefore,

that this appeal must be dismissed as to said appellant, White.

We submit, also, that said appellant, White, should now be ordered to pay a proper proportion of the costs in this court (we think about one-half), and a like proportion of the costs in the court below.

Respectfully submitted.

E. S. Isham and
Wm. Burry,
Solicitors for Appellee, Belle F. Page.

Opinion of Mr. Justice Harlan.

CIRCUIT COURT OF THE UNITED STATES—

NORTHERN DISTRICT OF ILLINOIS.

White
vs.
Wheeler, &c. } *Original, amended and supplemental bills.*

Moore
vs.
Wheeler, &c. } *Cross-bill.*

In a large portion of the property described in the pleadings, Page, it is clear, had no interest when this litigation commenced. That much was conceded on the oral argument, and the briefs of counsel show that all what there is of substance in the case relates to the Dearborn avenue property and a portion of the proceeds of its sale, and to the Lincoln avenue property.

The case is in many respects a close one. But after a very thorough sifting of the evidence, I find the following facts to be satisfactorily established in reference to the Dearborn avenue property:

In the year 1864 Page bought three lots at the corner of Erie and State streets in Chicago. The purchase was made for the benefit of the wife, and at a time when the husband was in a prosperous financial condition, entitled, without any injustice to creditors, to make a generous settlement upon the wife. On two of those lots he erected houses for the wife, in one of which they resided for several years.

In 1868 the other house and lot was sold to Gregory for $14,000, of which $5,000 was paid by the grantee assuming to meet a mortgage for that amount on the property, and the balance from time to time in cash. Mrs.

Page's object in the sale to Gregory was with the proceeds to purchase another residence. The third or unimproved lot was sold to Stark for several lots on the west side of the city, the title to which was improperly taken to Page. These lots on the west side of the city were advantageously sold.

About the time these transactions were concluded, or shortly thereafter, Mrs. Page formed the purpose to buy the Dearborn avenue property, then owned and occupied as a residence by Mr. Lewis, a former partner of her husband. The price for that property was $55,000, in payment of which sum Mrs. Page assumed to discharge an incumbrance thereon of $30,000, held by the Connecticut Mutual Life Insurance Company; the Erie street lot then occupied by Mr. and Mrs. Page as a residence was taken by Lewis at $15,000, and the balance, $10,000, was paid in cash through her husband out of moneys he had received on the sale of the Stark lots, and on the sale to Gregory.

Page and wife moved into the Lewis house and occupied it as a residence until some time in 1877. The title to the Lewis property was by mistake taken in the name of Page. The wife supposed all the time that the title stood in her name. It certainly was understood by all around her to be her property.

It may be stated in this connection that the Dearborn avenue residence was destroyed by fire in 1871, and $19,000 of insurance money was collected, of which $7,000 was retained by the party holding the $30,000 incumbrance, and the remainder was used in re-building the house.

Of the Dearborn avenue lot, thirty-five feet front was sold to Peck for about $9,000, and upon twenty-five feet

additional a mortgage to Willing for $5,000 was placed. Both of these amounts were received by Page. The remainder of that lot (about ninety feet front), was in 1875 conveyed by Page to Sprague for the purpose of being immediately conveyed, and it was conveyed to Mrs. Page. That was done in recognition of the fact that the property really belonged to Mrs. Page, in whom the title should have been originally put.

In 1877 the Dearborn avenue property was sold by Mrs. Page to Hoyt for $45,000, of which the sum of $15,940.64 was on October 3, 1877, paid to her, as will appear from the checks of that date, made in her favor by W. M. Hoyt & Co. Out of the amount received from Hoyt, Mrs. Page let her husband have and retain $7,500 for the purpose of making good an alleged defalcation upon his part as administrator of the estate of Maxwell. She evidently had some fear that his personal liberty would be endangered if that deficit in his accounts as administrator was not provided for, and it was in part for the purpose of relieving him in that respect, that she sold her residence and out of the proceeds advanced to him the before-mentioned sum, to be applied as just indicated. The amount so received from Mrs. Page is now represented by certain bonds and notes, "impounded" (to use the language of counsel) in the First National Bank of Chicago, which holds them, subject to the order of this court and of the Probate court. Both Page and wife claim that these bonds and notes really belong to the estate of Maxwell, being, as they contend, the proceeds of the $7,500 advanced by the wife to make good her husband's deficit as administrator of that estate.

The creditors claim that the bonds and notes in the

custody of the bank belong to Page individually, and consequently are subject to their judgment debts.

Mrs. Page also claims that her husband is indebted to her for the before mentioned sums received by him from Peck and Willing; and in respect of her claims upon account of those sums she insists that she should be regarded as a preferred creditor as to her husband's individual estate.

Touching the Lincoln avenue property, Page borrowed $10,000 to be used in improving it, and to secure that sum he put a mortgage upon it. For a like purpose he borrowed from Mrs. Maxwell the sum of $5,000, to secure which he gave her a conveyance of the same property, with warranty, taking from her, however, a written memorandum showing that the conveyance was in fact intended only as a security for the sum borrowed from her, and consequently to be treated as a mortgage.

The foregoing is a general outline of so much of the case as presents any points of difficulty. In ascertaining the facts I have treated as evidence on the hearing all that Page and wife said upon their examination before the master. I am not prepared to say that under the circumstances disclosed by the record, those statements should be excluded as evidence. And I have also taken into consideration the facts proved at the hearing. Counsel will not expect me to enter upon an extended review of the facts and of the authorities cited by them. The authorities have been examined, and full consideration has been given to the comments of counsel upon both the authorities and the evidence. I content myself with saying that neither the original nor cross-complainants have made a case clearly entitling them to the relief asked.

As before said, Page was abundantly able, without injustice to his creditors, to have made in 1864 a gift of property to his wife. If the proceeds of the property then given to the wife went into the Dearborn avenue property, if the latter was purchased by or for the wife, and if the bonds and notes in bank are the proceeds of the money advanced by the wife out of the money obtained on the sale of the Dearborn avenue residence, and for the specific purpose of meeting the alleged deficit in the husband's account as administrator of Maxwell, if those bonds and notes were held by Page for that purpose,—and that such are the facts, is shown by the evidence, with reasonable certainty,—then the equities of the wife are at least equal to those of the husband's creditors. That the title to the Dearborn avenue property was not put in Mrs. Page until 1875, by which time the husband had become seriously involved, if not insolvent, should not be taken as conclusive against her.

Notwithstanding the confusion that pervades the evidence, I cannot resist the conclusion that the title to the Dearborn avenue property was taken, originally, by mistake, in the name of the husband, without the knowledge or approval of the wife. The mistake was rectified before this litigation commenced, and the event should not permit that mistake (unaccompanied, as it was, by any fraudulent intent on the part of the wife) to defeat her just rights.

Too much confidence, I think, is attached by counsel for creditors to the fact that most of the transactions to which reference has been made, although involving the property of the wife, were conducted by and in the name of the husband. In the very nature of the relations ex-

isting between husband and wife, such must have been the mode in which these transactions have been conducted.

The same considerations control the decision of the case in respect to the property on Lincoln avenue. The debt due Mrs. Maxwell was discharged, and to the extent of $4,500, by money belonging to Mrs. Page. The conveyance to her was for the purpose of securing the sum so obtained from her, and to deprive her of the title without the repayment of that sum, with interest, would be inequitable.

Upon the whole case I am of opinion:

1. That neither the original nor cross-complainants are entitled to any relief as to the property held by the First National Bank of Chicago. So far as this court is concerned, the bonds and notes held by that bank may be withdrawn by Page if he be still administrator of Maxwell's estate, upon satisfactory evidence being furnished that his bond, as such administrator, is good and sufficient, or upon his executing a bond, with security, conditioned that he will, as administrator of such estate, faithfully account for such bonds and notes.

2. Mrs. Page has a lien upon the Lincoln avenue property, to secure the repayment to her of the said sum of $4,500, with interest, the conveyance to her being treated only as a security for the satisfaction of such claim.

3. To the extent of the sums received by Page from Peck, and not accounted for, Mrs. Page is to be regarded in the distribution of her husband's individual estate as an ordinary creditor, and not as a preferred creditor.

4. As to all other matters the original, amended and supplemental bills must be dismissed. Counsel will pre-

pare the proper decree, reserving, if it be desired, exceptions as to the action of the court in admitting, as evidence, the statements of Page and wife before the master, and the facts proven at the hearing. The decree, when prepared, may be submitted to the circuit judge, or, if he so directs, it may be sent to me through the clerk, after it shall have been examined by counsel on both sides.

JNO. M. HARLAN, *Circuit Justice.*

August 8, 1882.

(Endorsed.)

Filed August 10, 1882.

W. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, ss.

I, William H. Bradley, clerk of the Circuit court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the opinion of Justice JOHN M. HARLAN, filed in said court on the 10th day of August, A. D. 1882, in the cause wherein Alfred White is the complainant and W. E. Wheeler et al. are the defendants, as the same appears from the original thereof, now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this 1st day of November, A. D. 1883.

[SEAL.] WM. H. BRADLEY, *Clerk.*

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1893.

HORACE D. MOORE, *Appellant*,

vs.

BELLE E. PAGE, *Appellee*.

Brief on behalf of Mrs. Belle E. Page, Appellee.

EDWARD C. EAMES,
WILLIAM CURRY,
Solicitors for Appellee.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1883.

HORACE D. MOORE, *Appellant,*
vs.
BELLE F. PAGE, ET AL., *Appellees.*
No. 1117.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Brief on behalf of Mrs. Belle F. Page, Appellee.

MAY IT PLEASE THE COURT:

This is a bill, commonly called a creditor's bill, exhibited by alleged judgment creditors of Benjamin V. Page, to subject certain property to the lien of their judgments. The original bill in the case was filed by Alfred White, and contained charges, intended, probably, to cover nearly all the transactions of the seven or eight years of Mr. Page's life, immediately preceding the filing of the bill, in the hope that somewhere might be found some equitable interest which could be subjected to the payment of these judgments. It set out that he had been

engaged in all sorts of devious transactions, had at different times organized corporations, had conveyed a great deal of property at various times, and charged that everything he had done during those years had been done in fraud, to prevent the collection of the small judgment held by Mr. White. Pages 3 to 11 of the printed record, are filled with an abstract of these charges. Mr. Page answered all of them, explained all the real estate transactions in which he had been concerned, and although the creditors examined him and others at great length, to find the least trace of anything wrong in these transactions, they had to give it up entirely, and concede that everything had been fair and above board. The matters contained in this original bill and reiterated in the cross-bill of the present appellant, H. D. Moore, and the answers to the same, occupy the first twenty-one pages of the printed record. On the hearing below, it was not contended that a single allegation of the bill was true. No attempt was made to support any of the charges therein made, and therefore, the first twenty-one pages of this record may be considered as completely out of the case. The opening paragraph of the opinion of Mr. Justice HARLAN, who decided the case below, found on page 135 of the record, states that this was conceded on the oral argument.

Two or three other judgment creditors, allured by the charges of fraud contained in the original bill, and the transfers of the large amounts of property there sought to be attacked, filed intervening petitions claiming the benefit of anything that might be discovered in the cause; but they all abandoned the pursuit before the final hearing, and when the decree came to be entered, there remained to prosecute the case, only the original complainant, with a judgment then amounting with interest, to about $2,700,

and the cross-complainant, Horace D. Moore, claiming to have a judgment against Benjamin V. Page of about $14,000, with interest, but which judgment, we think, is shown by the evidence, to be one entered in fraud, and contrary to express agreement, and one which no court of equity will assist in enforcing.

In his cross-bill, the appellant, Horace D. Moore, introduced one new element into the cause, not thought of sufficient importance to be mentioned by the original complainant, which allegation is found on page 22 of the printed record. By this part of the cross-bill, it was sought to have a conveyance of certain property by Benjamin V. Page to his wife, Belle F. Page, held void as being in fraud of creditors, and it was asked that the court would subject that property or the proceeds thereof, to the payment of these judgments.

Finding that all the allegations of the bill, cross-bill and intervening petitions, had raked up nothing to which even the most hungry creditor could attach the taint of suspicion, counsel devoted themselves entirely to an attempt to have the conveyance of this property from husband to wife held void as against creditors.

By amendment at different times, the complainant and cross-complainant sought to discover other assets, but everything was finally abandoned by them except the following up of the property conveyed as aforesaid, by Mr. Page to his wife. The only part of the pleadings and record, therefore, contained in the first forty-four pages of the printed record that need now be considered, is the allegation of the cross-bill, drawing into the controversy this property, contained on page 22, and Mrs. Page's answer setting out why and how she acquired that property, commencing on page 33.

The piece of property so conveyed by Mr. Page to his wife, was situated at the corner of Maple street and Dearborn avenue, in the city of Chicago. It was sold to an innocent purchaser, and the controversy, therefore, practically narrowed down to the question of whether or not the proceeds of that piece of property ought to be applied in satisfaction of certain judgments. Part of the proceeds of that property had been invested by Mrs. Page in purchasing the equity, or rather a mortgage upon the equity of a certain piece of property on Lincoln avenue, in the city of Chicago. The decree sought by complainants was, therefore, that such interest as Mrs. Page held in the Lincoln avenue property, should be sold, and the proceeds applied in satisfaction of their judgment, and that the balance of the proceeds received by her from the sale of the Dearborn avenue property, should be followed, taken possession of by the court, and applied to the payment of these judgments.

The property at the corner of Maple street and Dearborn avenue was sold by Mrs. Page, the title being in her at the time she sold it, and it is not disputed that the person so purchasing from her acquired a good title thereto, paramount to the lien of these judgments; but the judgment creditors claim that the proceeds of the sale in her hands were and are liable to be applied in satisfaction of these judgments.

As we have said, part of the proceeds of that sale were invested in some property on Lincoln avenue. There is a mortgage for nine thousand dollars on the Lincoln avenue property, the lien of which is acknowledged by all parties to be paramount to the rights of all the parties to this suit, and the present controversy is only about the ownership of the equity therein.

We appear for Mrs. Belle F. Page, the wife of Benjamin V. Page, and claim that the Dearborn avenue property was her separate property; that her husband had no interest therein; that the proceeds are hers only, and that these judgment creditors have no right in any part thereof.

As to the Lincoln avenue property, we claim that Mrs. Page holds the legal title thereto; that her title is subject to the nine thousand dollar mortgage, but that she holds the title as security, first, for the sum of five thousand dollars, with interest for several years, and secondly, to secure her for certain moneys of her separate estate, advanced by her to her husband, Benjamin V. Page, and still owing to her.

The manner in which Mrs. Page acquired her right and title in and to this property is, we submit, shown by undisputed testimony to be as follows:

Benjamin V. Page formed a mercantile partnership with William G. Lewis and William Sprague, in 1857, dealing in paints, oils, dye stuffs, etc. The business was very successful; and it is shown by undisputed testimony that in A. D. 1864, Page's interest in the firm was worth at least one hundred and fifty thousand dollars; that the firm owed no indebtedness beyond the current monthly bills, and that he had considerable property outside of his business. (Rec., pp. 120, 121, 135.) In that year he bought for his wife, as a homestead, three lots at the corner of Erie and State streets, in Chicago, and the title thereto passed directly to Mrs. Page. (Rec., pp. 90, 99, 108, 120.)

The partnership continued to thrive, and was finally dissolved in 1866 or 1868 by Lewis buying out the other partners, and the share that Page received in cash for his

interest in the partnership was over two hundred thousand dollars. Besides this, he had other outside property, and owed no debts at all.

After the dissolution of the firm, a new firm of Page and Sprague, and shortly after another, Page, Sprague and Smith, was formed, and the old business of paints and oils was carried on by these firms, and Mr. Page's wealth continued to increase until the panic in 1873 and afterwards.

Immediately after purchasing the property at the corner of Erie and State streets, in 1864, Mr. Page erected thereon for his wife two houses on two of the lots, the other one remaining vacant, and he and his wife continued to reside in one of these two houses until 1870. The other house and lot was sold to C. A. Gregory in 1868, for the sum of thirteen or fourteen thousand dollars. There was an incumbrance on it for five thousand dollars which Gregory assumed, and he paid in cash from time to time the balance, eight or nine thousand dollars. The testimony shows that Mrs. Page hesitated some time before selling this house to Gregory, after both Gregory and Page urged her to do so, for the reason that it was her property, and she wished to keep it for a homestead. She finally sold it to Gregory, as she testifies, with the purpose of saving the money and keeping it to buy a better homestead than the one they were then occupying. She also sold the vacant lot to one Stark, taking in exchange for it several lots on the west side of the city, the title of which, however, was taken in the name of her husband; but Mrs. Page has sworn that she always regarded it as her own, and thought that the title was in her. Afterwards the lots taken from Stark were sold one by one, and netted her the sum of a little over seven

thousand dollars. (Record, pp. 109, 110, 112, 114, 80, 99.)

Mrs. Page, finding that she had now quite an amount of money on hand or to come to hand, and also the residence in which she was then living, found that her husband's old partner, William G. Lewis, was disposed to sell the residence, concerning which there is so much dispute, at the corner of Dearborn avenue and Maple street. Negotiations were opened which resulted in the exchange of the two residences. The price of the Lewis residence, which Mrs. Page was to acquire, was agreed upon at fifty-five thousand dollars, and it was to be paid for in this way: there was an incumbrance on it of about thirty thousand dollars, which was to be assumed by Mrs. Page; Lewis was to allow fifteen thousand dollars for the Erie street property, in which Mrs. Page was then living, and to assume a small incumbrance then on it, and he was to receive ten thousand dollars cash. This transaction was carried out as agreed upon, and Mr. Page paid, from the moneys he had received for his wife, the ten thousand dollars cash payment. He had then on hand, as moneys which had lately been received from the sale of the other two lots, sixteen thousand dollars belonging to his wife. Part of it, he testifies, had been received from Gregory within six, and, perhaps, within three months from the time he paid it over again to Lewis. (Rec., same pages.) That thirty thousand dollar mortgage was never paid by the Pages, and the only interest they ever owned therein was the equity. The figures are large, but the transaction relatively small.

Thereupon, Mr. and Mrs. Page moved into the Dearborn avenue property, and continued to occupy it until some time in 1877. All these facts, so far as related, are

practically admitted, several witnesses having testified to each one of them, including the attorney who drew the deeds, the parties who paid the money, and Mr. and Mrs. Page themselves, and *there is no evidence whatever to the contrary.*

When the deed of the Dearborn avenue property was made by Lewis, however, through a mistake or the carelessness of the conveyancer who drew the deed, Benjamin V. Page's name was inserted as grantee instead of that of Belle F. Page.

The title continued so to stand in the name of Mr. Page until January or February, 1875, when he conveyed it, through Mr. Sprague, to his wife. Mr. Norman Williams, the attorney who advised them in regard to these matters, also testified that he always understood that the deed ran from Lewis to Mrs. Page. (Rec., 121 and 122.) Lewis himself testified that he thought the deed he signed ran to Mrs. Page, as grantee, and was surprised to learn, on the bringing of this suit, that Mr. Page was the grantee. (Rec., 128 and 129.) Page himself says it was not done purposely, but through some mistake. (Rec., 100.) These facts are also undisputed. We ask in this connection that the court will read the testimony of Mr. Norman Williams, of Mr. Lewis and of Mr. Hoyt (Rec., 121–132), which is really all the testimony competent to be read on the hearing that there is in this case.

In October, 1871, their residence was destroyed by fire, and about nineteen thousand dollars insurance was collected thereon. Seven thousand dollars was retained by the party holding the thirty thousand dollars incumbrance on the property, and twelve thousand was used towards rebuilding the house. Page was then in good

estate, and assisted somewhat in building the house, but not to any large extent.

The property on Dearborn avenue bought from Lewis was about one hundred and fifty feet front. Some time after the fire thirty-five feet front of this was sold to Peck for about nine thousand dollars, and Page received that money. About the same time Mrs. Page executed a mortgage on twenty-five feet more of it to Henry J. Willing to secure eight thousand dollars which Mr. Page was borrowing from him. (Rec., 90 and 91.) Both of those sums Mr. Page received, and has never repaid to Mrs. Page, or accounted for to her.

A great deal of testimony has been taken to show when Benjamin V. Page became insolvent. He himself testifies that he was solvent till the end of 1875, and considered himself so for some time afterwards. An immense amount of debts owing by him and Sprague has been shown in evidence, nearly all of which, however, were secured by real estate mortgages, (Rec., 101 and 102), and it was not till the latter part of 1876, when the price of land had reached its lowest ebb, that he gave up hopes of saving himself and having a handsome margin. It was contended, however, by the complainants, and they insisted that the evidence showed it, that Page really was insolvent when he deeded this Dearborn avenue property to his wife, to whom it belonged, in January or February, 1875. The original bill alleges that Page was solvent, and worth at least $40,000 in November, A. D. 1874, (Rec., 2), and only alleges insolvency on and after January, A. D. 1877. That allegation was put in the bill before the creditors changed front entirely, and, abandoning their main case, sought to deprive Page's wife of a small settlement made on her ten years or more before their

claims were ever thought of. After January, 1875, about the time when they now allege that Page was hopelessly insolvent, his firm was hopefully prosecuting its regular business, and paid over $100,000 of their indebtedness, besides their secured debts, before they suspended payments (Rec., 83). And the ultimate deficit was not large, and was brought on by sudden depreciation of real estate, and it is fair to believe that in January and February, 1875 and long after, he was entirely solvent.

In the summer of 1877, Mr. Page had become embarrassed in his financial affairs, and during that fall went into bankruptcy. He had also been appointed administrator of the estate of one Maxwell, who at one time had been a partner of his in the oil business. Maxwell, a short time before his death, made a representation to Page, of his oil business, showing how it could be carried on with profit and advantage to his estate. After his death about seventy-five hundred dollars belonging to his estate came into the hands of Page, as administrator. He unadvisedly invested that money in the oil business, in which Maxwell had been engaged, and in which Mrs. Maxwell still retained an interest. The result was that it was all lost, and Page became liable, the attorney for Mrs. Maxwell held, for misappropriation of the estate. Mrs. Page says that this troubled her very much, and made her resolve to sell the Dearborn avenue property. (Rec., 54, 55, 57, 68 and 110.)

She placed it in the hands of W. D. Kerfoot, a real estate agent, for the purpose of negotiating the sale of it, and the result was, that in the summer of 1877 it was sold to William M. Hoyt for forty-five thousand dollars. The incumbrance on it at that time amounted to something over twenty-nine thousand dollars, and Mr. Hoyt

paid the balance, being fifteen thousand nine hundred and forty dollars and sixty-four cents, in cash to Mrs. Page. It was paid by a check to the order of Mrs. Page. Mr. Hoyt testifies that he understood Mrs. Page to be the owner of the property, and that he would not, at any person's request, have paid it to any other person than Mrs. Page. (Rec., 122 and 123.) On receiving this money Mrs. Page handed about seventy-five hundred dollars of it to Mr. Page, as administrator of the Maxwell estate, to make good the deficiency in that estate. She narrates the transaction in her answer and examination, and no testimony contradicts her averments. She states that she sold the property principally for the purpose of making good that deficiency; that she gave it to Mr. Page as administrator of the Maxwell estate; that she would not have given it to him in his individual capacity, or for any purpose other than to make good the deficiency in the Maxwell estate. That money was placed for that estate, by Mr. Page, on deposit in the First National Bank, under an order made in this cause, subject to the joint order of the judges of this court and of the probate court, the complainants claiming that it is assets of Mr. Page, and subject to their judgments. (Rec., 132 and 133.)

We think that in considering the evidence in this cause the court will not find any testimony whatever in any way conflicting with the statement of facts that we have here presented; and we contend that it is shown that this money, now in the First National Bank, cannot be held as assets of Mr. Page, but must be considered as a deposit for the Maxwell estate or returned to Mrs. Page; and we hold that it is also shown that Mr. Page is to-day indebted to Mrs. Page for the nine thousand dollars

and the eight thousand dollars, making seventeen thousand dollars, received by him from Peck and Willing for part of the Dearborn avenue property belonging to Mrs. Page.

The facts in regard to the Lincoln avenue property are about these: The property consists of four or five small tenement houses. Mr. Page owned the land, and undertook to build thereon this row of houses; for that purpose he borrowed the sum of nine thousand dollars, which is spoken of as the paramount mortgage on this property, expecting that amount would suffice to build the houses. It was not enough, however, and he borrowed from Mrs. Maxwell five thousand dollars with which to complete the buildings, and they were afterwards finished. By way of security he deeded the property by warranty deed to Mrs. Maxwell, taking back some memorandum of defeasance. When Mrs. Page obtained her money from Hoyt in 1877, five thousand dollars of it, or perhaps forty-five hundred, she paid to Mrs. Maxwell, and took the title to her, Mrs. Page. She testifies she did this on the advice of her husband, he telling her it was a good investment—a good mortgage to hold—and she invested the money in it solely for the purpose of holding a good investment. The title to the property was passed from Mrs. Maxwell to Mrs. Page by deed, on the payment to Mrs. Maxwell of this money. We do not think there is any evidence in conflict with this statement of facts, except, perhaps, as to some minor details of payment.

In regard to this Lincoln avenue property, and on these facts, these complainants claim that they are entitled to have the court find that the interest held in the Lincoln avenue property by Mrs. Page belongs to Mr. Page, and to have that property sold under their judgments, subject

only to the paramount mortgage of nine thousand dollars.

For Mrs. Page, we contend that she is entitled to hold this property as security for the five thousand dollars by her paid to Mrs. Maxwell for her mortgage thereon, and we hold that she is further entitled to hold this property as a preferred creditor, until her claim of seventeen thousand dollars against Mr. Page, for the money received by him from Peck and Willing, is paid to her.

These judgment creditors of Benjamin V. Page seek in this proceeding to subject the Lincoln avenue property and the proceeds of the Dearborn avenue property to the judgments they hold against him. The theory on which the bill and cross-bill are drawn, and on which all of the evidence and examination of the complainants were had and taken in this cause, is that the conveyance of the Dearborn avenue property in February, 1875, by Page to his wife, was made when he was insolvent, without consideration, and for the purpose of hindering and defrauding creditors, and is therefore void. There is a strange and to us a wholly incomprehensible ignoring on their part of everything that occurred before the making of that deed. They have never hitherto discussed or in any way attempted to meet the facts and circumstances shown to have preceded that conveyance, and which would have abundantly justified it, even if Page had then been insolvent. We have never heard an argument advanced by them to show why that conveyance was not a *fair and just restitution* to Mrs. Page of *her own property*, and such a restitution *as a court of equity would have forced Mr. Page to make*. We have never even heard them claim that Page received any credit through having the title to this property stand in his name, or that these

judgment creditors gave him credit on that account. Certainly the evidence and facts would not support such a claim. There was absolutely no evidence offered on that point at all, but, on the contrary, it is shown affirmatively that the only person connected with the transaction thought the title stood in Mrs. Page's name, and that it was generally so understood by all other persons. Despite all this counsel have hitherto persisted in ignoring all the circumstances preceding the making of the deed from Page to his wife in February, A. D. 1875, and we suppose they will do the same on this hearing. Probably the exigencies of their case force them to such a curious position, or they may think that, unless they can succeed in diverting the attention of the court to such false issue, they may as well abandon this last fragment of the case, as they have already abandoned every allegation in the original bill.

The opinion pronounced in the court below (Rec., 135) finds all the facts in relation to the settlement of the property on Mrs. Page in 1864 and the different changes it went through, to be as set out above in this argument; that all the equities in the case were with Mrs. Page; that she was entitled to the proceeds of the Dearborn avenue property, and gives to the creditors only the equity in the Lincoln avenue property, subject to the first nine thousand dollar mortgage, and to the payment to Mrs. Page of the money she had loaned on it, with interest, and to secure the repayment of which she holds the legal title. It was also decided that Mrs. Page was an individual creditor of her husband to the amount of about $17,000, and that she must share in the distribution of the individual estate. At the time of the hearing all the creditors but two had abandoned the case. The decree finds

in favor of these two, that one of them, Alfred White, the original complainant, was an individual judgment creditor to the amount of about $2,700, and the other, H. D. Moore, the cross-complainant, was a judgment creditor of the partnership of Page & Sprague, to the amount of about $18,000, and that the equity in the Lincoln avenue property be sold, subject to the $9,000 mortgage, and to the mortgage to Mrs. Page, and the proceeds be distributed first to the individual creditors, and then to the partnership creditors.

From this decree White and Moore appealed. On motion of Mrs. Page's solicitors at this term, the appeal of White was dismissed because it did not involve $5,000, and the present appeal is now prosecuted by Moore.

On the hearing below it was contended by Mrs. Page that there was not introduced any proper or competent evidence of the judgments in favor of White and Moore, also that the judgments were so unjust, and especially that the judgment in favor of Moore was so tainted with fraud that a court of equity would not lend any assistance to its enforcement, and also that there was no proper evidence in the case on which a decree could be based.

Mrs. Page does not now, however, ask for a reversal of this decree. She wishes it to stand. Of course neither White nor Moore can ask its reversal on such grounds. But we do ask the court to consider the character of Moore's judgment, and the evidence introduced to prove it, and the proof of the matters on which complainants relied for relief. We think the court will then be of opinion that the decree was much more favorable to Moore than he was entitled to upon such a judgment and such proofs, and that therefore he is not in a position to complain. If Mrs. Page is willing that the decree should

stand, certainly Moore should not be heard to complain of a decree which gives him much more than he was entitled to.

We would therefore first call the attention of the court to what this judgment of Moore's is, to the amount of equity its holder can claim for it, and to what its status in a court of equity ought to be.

In his cross-bill Moore sets up a judgment obtained in September, 1877, for about $14,000, on a *partnership* debt of Page & Sprague. He also claims that the indebtedness on which that judgment was obtained accrued in October, 1872. It is shown by the evidence that the notes evidencing that debt were secured by a trust deed on certain property in Chicago (Rec., 119); that in 1876 or 1877, when Page was becoming insolvent, negotiations were had with Moore with a view to his taking the property which his trust deed covered, in settlement of the indebtedness; that such an arrangement was agreed upon between the parties; that a quit-claim deed was prepared and executed by Page & Sprague, and filed for record, and that Moore drew that deed from the recorder's office, thereby accepting it. (Rec., 49.)

It was because of this very conveyance by Page to Moore that White made Moore a party defendant to the original bill, charging that Page had made the transfer to Moore for the purpose of defrauding his creditors.

Henry F. Eames, a banker, through whom these negotiations were carried on, testifies that he understood the matter was all closed and settled. (Rec., 119.)

Page testifies that it was all settled except a small matter of about $100 taxes, which he ought to have paid under his arrangement with Moore, but which he neglected

to do, and on record page 49 testifies to Moore's accepting the deed. On page 87 of the record the transaction is shown more in detail; there Mr. Page testifies to the arrangements made, the settlement agreed upon, and that Moore acknowledged that he had carried out his bargain, except the payment of $100 for taxes, but Moore said that Mr. Helm had proposed to him to take advantage of that small default, and to commence suit for the whole amount, and to divide whatever he might collect. Moore afterwards, for the purpose of carrying out the arrangement between Mr. Helm and himself, and for the purpose of obtaining this judgment, sold the property mortgaged, under the power of sale contained in the mortgage, for a trifle; and thereupon suit was commenced, and through a misunderstanding between Mr. Page and his attorney, the first thing Page knew was that a default had been entered against him, and judgment taken, upon the notes, for nearly their full amount. In his testimony (Record, 118), Moore does not deny any of the facts in evidence in relation to this judgment, but admits holding the land deeded by Page on a good and sufficient title, and thereby in this suit he has ratified that settlement.

We contend, on behalf of Mrs. Page, that the acceptance of the deed from Page merged and extinguished the mortgage and debt, and there remained no right to foreclose and get the judgment on which Moore's attorney, Helm, is speculating here, and that there is no such equity shown in this claim of Moore as to entitle him to any favor in a court of equity.

Of this judgment, poor and inequitable as it is, there is no competent evidence. While the case was before the master for testimony, counsel attempted to show an execution from another court on the judgment in favor of

Moore. (Rec., 119.) It was objected to, and was plainly incompetent. It was not proved or authenticated, in any manner, and therefore could not be admitted. On record page 133 it appears that a transcript of the record of the Moore judgment was offered in evidence on the hearing. This was objected to on the ground that no evidence could then be properly introduced. The equity rules limit the time for proof to ninety days from the forming of issue, unless the time is enlarged by order of court. No such order appears; the time had expired, and the evidence was therefore inadmissible. Other oral and documentary evidence, not now material, was also offered at the hearing, and taken subject to objection, as will be seen from the opinion (Rec., 138), and the decree (Rec., 141). We contend that Moore's judgment was not properly proven, and he cannot complain of the decree.

THE PROPERTY IN CONTROVERSY IS THE SEPARATE PROPERTY OF MRS. PAGE.

Under the circumstances of this case, we claim that the settlement of the Erie street property by Mr. Page on his wife in 1864, was one proper to be made, one which his circumstances justified, and one which will be supported in every particular by the court. If that settlement was good, then the Erie street property and everything she ever obtained in exchange for it, or in payment of a sale of any portion of it, belonged to her, and was her separate property, and she had a right to do what she pleased with it, and could lawfully leave the property or proceeds thereof in the care or custody of her husband, or even lend them to him, and take a mortgage of property therefor.

The law in regard to settlements by the husband upon the wife is so well settled, that it is almost superfluous to cite any authorities in regard thereto; but the remarks of Mr. Justice SWAYNE, in the case of *Smith* v. *Vodges*, 92 U. S., 183, are so applicable that we quote one paragraph:

The law of this case is too well settled to admit of doubt. In order to defeat a settlement made by a husband upon his wife, it must be intended to defraud existing creditors, or creditors whose rights are expected shortly to supervene, or creditors whose rights may and do so supervene; the settler proposing to throw the hazards of business in which he is about to engage upon others, instead of honestly holding his means subject to the chance of those adverse results to which all business enterprises are liable. *Sexton* v. *Wheaton*, 8 Wheaton, 229; *Mullan* v. *Wilson*, 8 Wright, 413; *Stileman* v. *Ashdown*, 2 Atk., 481.

The case of *Sexton* v. *Wheaton*, is also a case where it is held that a voluntary settlement on a wife by a person not in debt cannot be impeached by creditors. In delivering the opinion, Chief-Justice MARSHALL says:

The bill does not charge Mr. Wheaton with having been indebted in January, 1807, when this conveyance was made. The fact that he was indebted cannot be assumed. Indeed, there is no ground in the record for assuming it. The answers aver that he was not indebted, and they are not contradicted by any testimony in this cause. His inability to pay his debts in 1811 or 1812 is no proof of his having been in the same situation in January, 1807. The debts with which he was then overwhelmed were contracted after that date. This conveyance, therefore, must be considered as a voluntary settlement made on his wife by a man who was not indebted at the time. Can it be sustained against subsequent creditors?

It would seem to be a consequence of that absolute power which a man possesses over his own property, that he may make any disposition of it which does not interfere with the existing rights of others, and such dis-

position, if it be fair and real, will be valid. The limitations on this power are those only which are prescribed by law.

It was contended in that case that the wife's actions had been such as to lead other parties to believe the property belonged to the husband. Evidence was introduced that the *husband had so represented* it, but the court find *the wife never countenanced such representation*, and it is said, on page 240:

A wife who is herself the instrument of deception, or who contributes to its success by countenancing it, may with justice be charged with the consequences of her conduct. But this is not such a case, and we consider the rights of Mrs. Wheaton as unimpaired by anything she is shown to have done.

And on page 241 the court say:

Without discussing the conduct of Mr. Wheaton in this transaction, it is sufficient to say that it cannot affect the estate previously vested in his wife. The cause, therefore, must depend on the fairness and the legality of the conveyance to her.

To the same effect and as establishing just as conclusively the doctrine that the husband, while solvent, may make a voluntary settlement on his wife, and that it can only be impeached by creditors who were injured thereby and whose debts existed at the time of the settlement, or whose debts were incurred shortly thereafter, the settlement having been made with a view to avoid them, we cite the cases of *Hindes, lessee*, v. *Longworth*, 11 Wheat., 214; *Moritz* v. *Hoffman*, 35 Ill., 553; *Bridgford* v. *Riddell*, 55 Ill., 261; *Vazel* v. *Palmer*, 81 Ill., 85.

The law in regard to this matter of settlement is so well declared, that probably counsel for complainants will not contend that if the settlement in 1864 was as is

stated in the evidence, it was a good settlement as to all their claims. They may however, contend that when the title to the Dearborn avenue property was taken to Mr. Page instead of to his wife, in 1870, the property thereby became his, and that the conveyance by him to her in 1865 was by way of a new and original settlement, and not a carrying out of a former one, and it may be that they will now say that they were led to trust him and give him credit, because this property stood in his name from 1870 to January, 1875.

We contend that this position cannot be for an instant sustained. Mrs. Page believed, and everybody connected with that transaction, except perhaps the conveyancer who drew the deed in 1870, and Mr. Page himself, testified that they thought the conveyance was to Mrs. Page; that the property was always considered hers. The *grantor* in that conveyance *thought that he was deeding the property to Mrs. Page;* she continued to occupy it as her home, and always claimed it was a homestead she had acquired in exchange for her old homestead on Erie street. Counsel have insisted that Mrs. Page must have learned that the title was in Page's name when the deeds were made to Willing and Peck. That is absurd. Husband and wife both join in a deed conveying land, and the deed does not say which is the owner. There is no recitation of title in a deed, and the form is the same whether the husband or wife held the title. That Mrs. Page thought this property had been deeded to her from Lewis, up to the time the legal title was put in her in 1875, is set up in her answer, and is shown by Page's direct and positive testimony.

That these facts are sufficient to continue the property in Mrs. Page, and that her right to the property as her

separate property was in nowise prejudiced thereby, we cite the case of *Seeders* v. *Allen*, 98 Ill., 468. This case is so directly in point that we present to the court herewith a complete statement of facts as contained in that case, and the opinion of the court in full. The statement of facts is as follows:

This was a bill in chancery, filed by Singleton B. Allen, assignee in bankruptcy of James B. Seeders, to have set aside a certain conveyance to Mary L. Seeders, the wife of the bankrupt.

It appears Charles S. Walker died intestate, possessed of the land in controversy, leaving two heirs, Orlando Walker and Mary L. Walker, who intermarried with James B. Seeders. On a petition made by Orlando Walker and James B. Seeders, the former conveyed the land involved in this litigation to James B. Seeders and Mary L. Seeders, his wife, without her direction. This deed was made on May 26, 1873, and the property remained in the joint names of the husband and wife upon the records until August 31, 1876, when James B. Seeders and Mary L., his wife, conveyed the same without any consideration to Orlando Walker, who, on the same day, conveyed the same lands without any consideration, to Mary L. Seeders.

From May 26, 1873, to August 31, 1876, James B. and Mary L. Seeders occupied the land, during which time James B. Seeders exercised the care and supervision of the same that men usually exercise over their farms, and incurred many debts, as was alleged, on the faith of his ownership of said lands. On or about March 1, 1877, James B. Seeders, the husband, was adjudged a bankrupt, and the appellee appointed assignee of his estate, who, on September, 1877, filed this bill to have the land subjected to the payment of James B. Seeders' debts.

On the hearing the court ordered that the deeds of August 31, 1876, executed by James B. Seeders and wife to Orlando Walker, and that of said Walker to Mary L. Seeders be set aside and for naught held as to the half interest of James B. Seeders. This appeal is prosecuted to reverse that decree.

On this statement of facts it was contended by counsel for the wife as follows:

James B. Seeders had a naked legal title, obtained without consideration, and without the consent of the owner of the equitable estate. He was a mere trustee, and could at any time have been compelled by his wife to convey to her the legal title. If she had filed a bill to compel a conveyance to her, it would have been the duty of the court to grant her relief. Washburn on Real Property, vol. 2, pp. 177 to 182; *Forbes* v. *Hall*, 34 Ill., 159; *McDowell* v. *Morgan*, 28 *id.*, 533; *Wilson* v. *Byers*, 77 *id.*, 76.

Even if Mrs. Seeders had been silent in regard to the title in her husband, her rights would not have been prejudiced or the trust in her favor overthrown. *Carpenter et al.* v. *Davis*, 72 Ill., 14.

Seeders was acting for his wife in making the partition; it was his duty to have taken title to her. Taking title to himself was in violation of his duty to her, and she is entitled to the estate. Story Eq. Jr., Sec. 1210, and note to

The equitable claim of Mrs. Seeders was perfect against her husband. If the husband had been really indebted to her for a transaction disconnected with the land, he had a right to prefer her as a creditor, and convey the land to her as a payment. *Thornton* v. *Davenport*, 1 Scam., 298; *Francis* v. *Rankin*, 84 Ill., 170.

For the creditors it was contended that the land had been conveyed without consideration. The opinion of the court, which we give in full, is as follows:

We find no grounds for setting aside the deeds by which the legal title to the lands in question passed from Seeders to his wife. The proofs present no indications of fraud on the part of Mrs. Seeders, or anything said or done by her inviting others to trust her husband on the suppostion that he was the real owner of the land. She never, by word or deed, held him out as such owner to the world, or to any of these (who afterwards became) creditors. *She was in equity the owner, and her equitable title was by these deeds properly converted into a legal title,*

and this before any lien was established against the title in the hands of her husband. Her equity was first in time, and therefore the first in right, and was first consummated. The intention of Mrs. Seeders to get the legal title in advance of creditors who were seeking it or might seek it, was not a fraudulent intent. The land was equitably her own, and as between her and creditors of her husband, she was equitably entitled to it. This is not a case of a debtor conveying his own estate to his wife to prevent creditors from seizing it. The decree is therefore reversed and the bill dismissed.

We think it would be hard to find a case more exactly covering the points raised in the one at bar than the case just cited; and we insist that, in the light of this decision, it must be held that the conveyance from Page to his wife in 1875, was a mere act of restitution, related back to the conveyance of 1864, and was made in fulfillment of a plain moral duty on his part, and one which a court of equity would at any time have enforced.

Cases where the wife permitted land to stand in her husband's name, *knowingly*, and he contracted debts *on the faith thereof, with her knowledge*, do not apply to the wife in this case, as she did not know it stood in his name, and always acted as if she owned it.

In Illinois, since A. D. 1861, a wife may receive, own and control separate property. The natural trust and confidence with which a woman turns to her husband in the management of her affairs is not a badge of fraud and collusion. The statute gives her the independent ownership and control of her property, and courts should protect it. These persons engaged in this hungry pursuit *were never misled by Mrs. Page*, and there is no principle that calls upon a court of chancery to treat the natural confidence of a wife in her husband as an evidence of conspiracy. It is of more consequence to society to uphold

the security of this confidence than to fill the maw of speculating attorneys and their clients with the small property of a lady who owes them nothing, and who has never aided to mislead them.

Appellant does not contest that in 1864 Mrs. Page acquired the Erie street property. Then it was hers as much as if she had obtained it from her father, and if the husband afterwards wrongfully took title to land bought therewith, it is her property still as much as if the original settlement had been made by her father.

In this connection we would like to call the attention of the court especially to the case of *Smith* v. *Vodges*, 92 U. S., 183, already cited. In that case the husband had given certain premises to his wife in 1862; he was then in debt, and the conveyance may have been fraudulent as to his then creditors, but he paid off all his debts within two or three years thereafter. He then began to prosper, and in January, 1866, paid off an incumbrance, by way of ground rent, on the property he had given his wife, to the amount of three thousand dollars. His prosperity continued, and at one time he was worth considerable money; but in 1867, in the panic of that year, he began to fail. His wife had carried on a millinery business in her name in the property bought by him for her and held in her name from 1862 to 1864; in that year the business was transferred into his name, and he continued to carry it on. The evidence shows that from 1862 to 1867, their profits sometimes amounted to from ten to fifteen thousand dollars a year, a large share of which went to the wife during the time she had been conducting the business. When he began to be embarrassed in 1867 she loaned to him from her separate property, which was merely the property he had conveyed to her in 1862, and the accumula-

tions she had been able to make thereto and thereby, the sum of four thousand dollars. Under this state of circumstances the court say:

"We hold the transactions, both as to the ground rent "and the original purchase, to have been honest and "valid."

And the court also held the loan of four thousand dollars, and the mortgage which he gave back to her to secure that loan, good and valid.

Bearing in mind this decision, can the court for an instant hesitate in upholding the loan of five thousand dollars made by Mrs. Page to her husband, and for which she took the security of the Lincoln avenue property, and does she not also hold that Lincoln avenue property as security for the payment of the money she helped her husband to raise from Peck and Willing by means of selling and pledging part of the Dearborn avenue property her separate estate? And opposed to this claim of Mrs. Page so strongly supported, and a claim based upon the highest equity, we find a judgment based upon a claim that was compromised, and settled in full before judgment was obtained upon it. We know that this is not the time or place for the judgment debtor to attack the validity of this judgment, but appellant is here asking the active intervention of a court of equity, and, for the purpose of subjecting this property to his judgment, he sets up and attempts to prove what the claim was on which his judgment is based, and at what time the indebtedness it evidences accrued. When he comes into a court of equity and sets up a claim of this kind, and invites such an inspection of his original claim, and attacks a settlement on the debtor's wife, he subjects his claim to the closest scrutiny, and the court must see to it that his claim is

founded in equity, as well as evidenced by a judgment, before it will give the aid here asked for. Before granting him any relief, this court will require him to show that his hands are clean, and that he is guiltless of any tricks or fraud or *undue advantage;* and we claim that if this court is to properly and fairly adjust the equities of these parties in relation to this judgment, it will order it satisfied of record, or hold it null and void as having been obtained on a claim that had been fully settled and paid.

Although the defendant, Page, may be debarred in this case from questioning the appellant's judgment, and will not be heard in this proceeding to set up that it was improperly obtained or entered up on a debt that had been paid or settled, yet we contend that Mrs. Page, the voluntary grantee of Page before the judgment was entered, has a right to question the equity of the judgment. When a judgment creditor seeks to set aside a conveyance made by his debtor, as against the grantee of that debtor, then such grantee, even though holding by a voluntary conveyance, and therefore being a grantee fraudulent in law, has a right to question the judgment and show how much was really owing by the fraudulent grantor to the creditor before the conveyance. If Mrs. Page is a voluntary grantee in this case, before yielding up the property conveyed to her, she has a right to scrutinize the debt Page owed appellant, and find for what amount it ought to have been entered up. In the case of *Bean* v. *Smith*, 2 Mason's C. C. R., 252, Mr. Justice STORY delivered a long and very elaborate opinion on the subject of creditors' bills. The opinion alone covers thirty-three pages, and is a full discussion of the law. In that case counsel for the judgment creditors

contended that the judgment was conclusive, and could not be examined into. But on page 299 Justice STORY considers whether or not the judgment may be examined into, and says:

The only further point on which I have paused, has been as to the extent of the plaintiff's demand. It originated in the Farmer's Exchange bills, which, at the time of the giving of the drafts on which the plaintiff's judgment was founded, were at a great discount. At law I am aware, that the plaintiff might be entitled to the full amount of his judgment, notwithstanding any purchase of this sort. But I think a court of equity has a right to moderate his claim, and, if he asks equity, to compel him to do equity; all that in conscience he ought to claim under all the circumstances against Simon Smith is the value of the bills in the bank at the time he received them or bought them, with interest from that time to the present.

In the case of *Smith* v. *Crocheron*, 2 Edws. Ch., 501, being a creditor's bill, the defendant, answering, set up a compromise and settlement of the claim before the judgment was entered thereon. The part of the answer, so setting up the compromise and settlement was excepted to; the master disallowed the objection, and the court in deciding the matter, say:

As to the second objection, I consider the master has decided correctly in likewise disallowing it. This exception depends upon the same principle as the last. Those parts of the answer which set up the composition agreement, and show that the judgment ought not to have been recovered, cannot at this time be passed upon as immaterial and improper. The complainants come here asking for equitable interference and the recovery of a debt. *If they have not done equity they must not ask it.*

This decision from New York governs in this state, for in the case of *Gage* v. *Smith*, 79 Ill., 224, the court hold that our creditors-bill act is borrowed from the laws of

New York, and that the construction given it therein is of authority in this state.

THERE WERE NOT PROPER PARTIES TO THE CAUSE TO SUSTAIN A DECREE GIVING TO THE CREDITORS THE MONEY ADVANCED BY MRS. PAGE TO HER HUSBAND AS ADMINISTRATOR OF THE MAXWELL ESTATE.

Mr. Page was the sole administrator of the estate of Joseph P. Maxwell, deceased. From the stipulation on record, page 134, it appears that there was another administrator appointed. Mr. Page testifies to the same thing. Mrs. Page testifies positively that she gave to her husband, *as administrator*, about $7,500, and both Mrs. Page and her husband testify that one of the principal reasons that induced Mrs. Page to sell her homestead, was to replace this amount to the Maxwell estate and relieve her husband from what the attorney for Mrs. Maxwell claimed was misappropriation of trust funds. That money is on deposit in the First National Bank as money belonging to Page as administrator. (Rec., 133.) The testimony is undisputed that it was given him only as administrator.

On record, page 132 is an order entered in this cause on January 25, 1878, and in it is recited that Page claimed this money *as administrator of the Maxwell estate.*

One of these two administrators is not a party to this cause, and Mr. Page is not made a party as administrator. Yet the creditors seek to have this fund of $7,500 diverted from the Maxwell estate, and applied on their judgments when the other administrator of the Maxwell estate is not in court. They seek to take from the hands of that other administrator a fund which is in contempla-

tion of law in his custody for the benefit of the Maxwell estate without his presence in this cause to defend the fund, the Maxwell children and himself, from the decree depriving them of this money. That the administrator of this estate is a necessary party, and ought to be here to defend the rights of his *cestui que trust*, is shown by the reasoning of the court in the case of *Baker* v. *Administrator of Backus*, 32 Ill., 96.

WHAT COMPETENT EVIDENCE IS THERE IN THIS CASE?

We next wish to call the attention of the court to the state of the evidence in this cause. Complainants examined Mr. Page before the master at very great length, at two or three different times. They also examined Mr. Sprague, his former partner, and Mrs. Page, the defendant, Page's wife, and therefore not a competent witness. The evidence on which they rely almost exclusively to support the issues made by them, consists for the most part of these examinations. We contend that none of these examinations are proper evidence; that on each successive examination objection was made to such examination; that the complainants repeatedly refused to call Page, Sprague, or Mrs. Page as witnesses, and insisted on examining them as defendants under the order of the court granted for that purpose. We insist that such examination is not evidence, and cannot be read on the hearing of the cause; that it is taken for the single purpose of helping any receiver who may be appointed in the cause, to take possession of the property of the defendants, and of ascertaining what property should be turned over to him; that the time for taking such examination is on the filing of the bill, or the appointing of the receiver; that it is improper to take it after answers have come in; that

after issues formed, only testimony can be taken, and all the rules of taking evidence must be then observed. If we are correct in this position, as we think we are, it follows that the complainants were left without any evidence to support the allegations of their bills, and their bills should have been dismissed for want of equity.

The bill in this cause was filed in May, 1877. Mrs. Page was not made a defendant until January 10, 1878, and did not appear in the cause until February 4, 1878. Before that time, and on the 14th of January, 1878, complainants procured an order from the court appointing Kerfoot receiver of Page's estate, and commanding Page to appear before the master in chancery and execute an assignment of all his property to such receiver, and providing further "that he appear before such master, from "time to time, as said master shall require, and submit to "such examination as said master shall direct in relation "to his property and effects aforesaid, and the condition "thereof." (Rec., 31.)

On the same day, January 14, 1878, complainants procured another order from the court appointing Kerfoot receiver of the property of both Page and Sprague, requiring them to appear before the master in chancery and execute an assignment of all their property to such receiver, and providing further, "That they should each of "them appear before said master from time to time as said "master shall require and submit to such examination as "said master shall direct in relation to their property and "effects aforesaid and the condition thereof." (Rec., 31.)

Under those orders, and before the appearance of Mrs. Page in the cause at all, and before she had been served with process, William Sprague, one of the defendants,

was examined on January 21, 1878, no person being present to represent Mrs. Page. (Rec., 45-47). On the same day, January 21, 1878, and under the same circumstances, and still without the presence of any representive of Mrs. Page, the defendant, B. V. Page, was called and examined at great length. (Rec., 47-58.)

When complainants' solicitors resumed the examination of Mr. Page, on January 22, 1878, Mr. Isham appeared and objected to certain questions then asked Page on such examination, as tending to prejudice the interests of Mrs. Page, in the cause, and making the point that the examination should not proceed until the coming in of her answer. The question was referred to the Circuit judge (Rec., 58), and he held that the examination should proceed, *and should be confined to inquiries about property that ought to be taken by the receiver.* Against the objection of counsel for Mrs. Page, Mr. Page's examination was thereupon continued upon every subject conceivable. (Rec., 58-75.)

On December 14, 1880, after all the issues in the case were completed, and at the proper time for taking testimony, and when the examination of the defendant, such as properly may be had at certain stages of the case on a creditor's bill, had passed by, the complainants' solicitors re-called Mr. Page for *further examination under the orders previously taken.* Counsel for Mrs. Page objected to any further examination of Mr. Page on the ground that he had been examined and cross-examined, and his testimony signed, and that the cause had been put at issue and referred to the master for proof. This objection was overruled by the master and certified to the circuit judge and the objection was by him overruled, and he decided that Page could still be examined as a defendant (Rec.,

76); and thereupon the examination of Mr. Page *as a defendant*, and under the orders of court of December 14, 1878, providing for his examination as such defendant, was proceeded with against the objection of counsel for Mrs. Page (Rec., 75–104.)

In December, 1880, after all issues were formed, complainants wished to examine Mrs. Page as a defendant and not as a witness. Her counsel objected and the matter was carried before the circuit judge, and the following order was entered (Rec., 44):

> On motion of the counsel of the plaintiff it is ordered that they have leave to examine Mrs. Belle F. Page before H. W. Bishop, master in chancery, *this order made without prejudice, and counsel for Mrs. Page excepts to said order.* It is further ordered, that counsel for plaintiff have leave to examine C. H. Mulliken, touching the account filed herein on the 28th day of December, 1880.

Against the objection of her counsel her *examination as a defendant* was thereupon taken. (Rec., 108–118.)

The only evidence offered by appellant in support of the allegations of his cross-bill, in addition to the examinations mentioned above was the proof of his judgment already referred to, some matter contained in the stipulation (Rec., 134), and the testimony of Kerroot and Manning (Rec., 104–107), and of the cross-complainant, Moore (Rec., 118).

These witnesses testified to minor points in the case, and their testimony, taken by itself, is wholly immaterial and made no case whatever for the complainants, except as above stated; the complainants' solicitors *offered no evidence to support their bills, except this examination*, in great part *exparte*, of Mr. and Mrs. Page and Mr. Sprague, and if our position was well taken, that such examination

cannot be used as evidence, then the complainants were without evidence to support their bills, and certainly cannot complain of the decree entered, which did give them something.

On the other hand, on the part of Mrs. Page, evidence taken in proper manner was adduced proving conclusively every fact we have in this argument claimed on her part.

We do not think the examination referred to contains anything that will weaken our case. The whole point of those many pages of examinations referred to, the sole object for which it was all taken, was to show that Page was insolvent in January, 1875, when he conveyed the Dearborn avenue property to Mrs. Page, and we think we have already shown that this is an immaterial point in the case, and that Mrs. Page's separate estate dates back to 1864. We also contend that even taking these examinations as competent evidence, it does not appear from it that Page was insolvent in January or February, 1875.

And first we wish to discuss the admissibility of this examination as evidence, *on the hearing*, for any purpose.

On behalf of Mrs. Page, we objected to the examination at nearly every stage of the proceedings, and we especially objected to any examination that did not relate particularly to the property to be turned over to the receiver, or which ought to be turned over to the receiver. In High on Receivers, Secs. 415 and 416, it is held that the examination in such a case as this, is solely for the purposes of ascertaining matters connected with the receiver, and that it must not be extended beyond that. It is there stated:

Under such an order of reference, however, the plaintiff was not authorized to examine the defendant or any person, as to matter not connected with the receivership, or with ascertaining the possession, nature or character of the property which was to be assigned to the receiver. * * * The chief purpose of such an examination was to ascertain what property the debtor had under his control and in his possession, in order that it might be delivered to the receiver for the benefit of the creditor.

In the case of *Fitzburgh* v. *Ezeringham*, 8 Paige, 30, in discussing the proper scope to be given to such an examination, and the use to be made of it, the chancellor said:

The defendant is under a mistake in supposing that the master, upon the order to appoint a receiver, is to try the whole matter in litigation between the parties. He may, indeed, make inquiries under oath, as to the property in his possession or under his control, for the purpose of seeing whether it is all delivered over to the receiver, and he may also examine witnesses for the purpose of ascertaining whether there is any property in the hands of other persons, to which the receiver is entitled under the order, to enable the receiver to take the necessary steps to recover such property from the persons in whose possession it is; but the defendant cannot be required by the master to deliver up property which, upon his oath, he declares is not in his possession or under his control. I have understood that some abuses have occurred under these orders for a defendant to deliver over his property on oath; but if the master permits the interrogatories to extend beyond the legitimate purpose of obtaining a delivery of the property which the defendant has a right to control, the proper course is to bring the question before the court by an appeal from the master's decision.

In the case of *Browning* v. *Bettis*, 8 Paige, 570, the chancellor said:

For the only object of the examination of the defendant or other witness, in such a case, is to ascertain whether

the defendant complies with the order of the court in delivering over his property to the receiver. * * * * But this court decided in that case, as it had often been done, that the complainant had no right to examine the defendant as to matters which were not relevant to the subject of the reference, to wit. the assignment and delivery of the property in his possession or under his control. * * * The object of the examination in such a case is not to obtain an answer to the bill, *nor is it to elicit evidence to enable the complainant to sustain his suit*, but merely to procure and compel a delivery to the receiver of all the property and effects, either legal or equitable which the defendant has in his possession or in his power or control, to abide the final decree in the cause.

The case of *Green* v. *Hicks*, 1 Barb. Ch., 309, is a full discussion by the chancellor of the purpose and scope of such an examination, and there it is held to be beyond dispute that the object of such an examination is solely for the purpose of ascertaining to what property the receiver is entitled.

It will be observed also, that under this order for his examinntion Mr. Page was examined a second time, and at still greater length than the first time, against the objection of counsel.

In the case of *Starr* v. *Morange*, 3 Edws., 345, it was held that it was not proper practice to compel the defendant to go through such an examination a second time.

In this state of the record, and in the light of the decisions just quoted, we insist that complainants had no evidence whatever to sustain the issues made on their behalf in this cause.

But even if the court should be of the opinion that the examination of these defendants might properly be read as evidence as against Mrs. Page, even examination taken when she was not in court and not represented by counsel,

still we contend that all this examination, so carefully and elaborately taken, does not prove a single fact against her rights as we have here presented them. The whole purpose of the examinations, so far as it related to the issue made, must be taken to have been to show that Page was insolvent in January and February, 1875. We do not think this material to the case, but we contend that it does not show that he was insolvent. Complainants' solicitors carefully drew out that he was indebted on paper to a very large amount, but as carefully concealed the fact as far as they were able, that it was all or nearly all secured by real estate mortgages, worth, in most cases, more than the debt. Even down to 1877 Page and Sprague received some margins on foreclosures of part of this debt.

On his cross-examination (Rec., 101 and 102), Mr. Page testifies that the amount of debts about which he had been questioned by complainants' solicitors amounted to $260,000; that of that amount, about $224,000 was secured with what was adequate security, in 1875. All these debts mentioned were debts of the firm of Page & Sprague, and Mr. Page testifies (Rec., 83), that after January, 1875, they paid at least $100,000 on account of them, with interest thereon. This payment of $100,000 was more than double the amount of the unsecured debts he had at that time. The witnesses called by complainants only testified that H. H. Honore and Samuel J. Walker, and one or two other persons whose paper Page held, were insolvent in 1875, but in conducting that examination they are again careful to avoid drawing out the fact that the paper of these men held by Page & Sprague was secured on real estate.

This examination of Mr. Page, especially that had before the appearance of counsel for Mrs. Page, was

merely made with the intention of trapping him by some contradiction, if it could possibly be done. The attorneys seem very anxious to have him fix dates. They wished him to describe from memory the policies of insurance he had; what companies had issued them, and the different amounts secured by each after he had told them he had policies in over two hundred companies at the time of the fire, that they had all been destroyed, that he could not recollect what they were, and that the transactions were seven or eight years before that time. So in regard to the small household checks used by his wife, the receipt of the money from Hoyt, and how it was deposited. Many pages of evidence were taken to try and find out whether the money was placed in the First National Bank to the credit of Mrs. Page by way of ordinary deposit, or by way of certificates of deposit. Pages 50 to 75 of the record consist principally of an attempt to trap him into some slight contradiction between bank checks and certificates. Half a dozen attorneys seem to have been questioning him, one after another, and trying to catch the man and trip him up on any little mistake of memory. They did at one time succeed in making him say that the money was put into the First National Bank to the credit of Mrs. Page by general deposit, and two years afterwards, on another examination, he said he thought it went in by way of certificates of deposit. Two or three other contradictions, fully as important as this, were obtained from this defendant, after many weary days of examination, a mere abstract of which covers pages 47 to 104 of the record.

Every time Page gave them even an approximate date or amount they turned it over and over again, and questioned him back and forth, to see if in some way he had

not forgotten a cent or missed a 29th of February. They insisted on categorical answers, and allowed no explanations. No "best of recollection" was called for or permitted, but he either had to answer "yes" or "no," or that he did not remember. The court will remember, also, that this took place in the absence of counsel for Mrs. Page. Under such circumstances, the fact that they sometimes made him incidentally speak of the Dearborn avenue property as his own, can hardly be given much weight. When pretending to question him on other matters, and referring to the Dearborn avenue property only incidentally, he sometimes referred to it as his own. But even then he would almost, in the succeeding sentence, speak of it as Mrs. Page's, and speak of asking her consent to the exchange or sale; when questioned directly as to the ownership of that property, and when his attention was specially directed as to who paid the money therefor, or to whom it belonged, he unhesitatingly and in a straightforward manner told a story in the closest accordance with the statement of facts that we had embodied in this brief. (Rec., 78, 83.)

From the opinion pronounced in the court below, it will be seen that the court did not think it necessary to decide whether these examinations and the testimony offered on the hearing were competent as evidence or not (Rec., 138); for taking them all into consideration as evidence, the court still found all the equities of the case to be with Mrs. Page.

The opinion and decree in this case find that Mrs. Page is an individual creditor of her husband and entitled to share as such in the distribution of his individual estate. This is a substantial right given her by the decree, one which the evidence abundantly justified and on account

of which Mrs. Page is now in a position to ask the affirmance of the decree. Mrs. Page's rights are certainly as large as those given by the decree, if not larger. It seems to us that she is entitled to reimbursement of all moneys advanced by her to her husband before she can be required to surrender to unsecured creditors the equity in the Lincoln avenue property.

She now holds title to the Lincoln avenue property, deriving that title from Mrs. Maxwell, after buying from her the $4,500 mortgage she held on it. While holding that title, and considering herself secure in it, she advanced to her husband, the judgment debtor, $5,000, by giving security to Willing for her husband's debt to that amount, and $8,000 derived from a sale to Peck of part of her Dearborn avenue property. She is now entitled to hold the title to the Lincoln avenue property until she is reimbursed this $13,000 and interest. Page certainly was indebted to her as much as to any of these judgment creditors, and had a right to prefer her by deeding the property to her, if he did not come in conflict with the bankruptcy laws of the United States. The right to prefer a creditor, under such circumstances, does not need the citation of authority to support it here.

But even if the court should hold that the conveyance to her of the equity of redemption in the Lincoln avenue property was voluntary, and therefore in law fraudulent, she still has a right to be reimbursed all money she had advanced on account thereof, or on the faith thereof, before being required to surrender the title to judgment creditors.

This was discussed in the case of *Bean* v. *Smith*, already cited. In that case Justice Story draws a broad distinction

between the rights of a grantee fraudulent in law and of one fraudulent in fact, and holds that:

> If no such actual fraud was originally in contemplation, but the law adjudges the conveyance fraudulent on motives of public policy, as in cases of voluntary or other conveyances which are void against creditors and purchasers, there, *if any advances have been made or any other equities arise*, they may be enforced by the court in favor of the grantee.

The decree is correct in holding Mrs. Page to be an individual creditor, and as such, entitled to priority of payment over partnership creditors out of individual property.

We have one further point to argue in Mrs. Page's interest. The cases of *Seeders* v. *Allen*, 98 Ill., 468, and of *Hodges* v. *Smith*, 92 U. S., 183, establish that she is entitled to stand as a creditor for the amount due her from Page. Of the judgments on which this proceeding is based, only one, Mr. White's, for about $1,800 and interest, is an individual debt of Mr. Page. The others were founded on debts of the firm of Page & Sprague. The property in controversy, however, is an individual asset of Page. Even according to appellant's theory, the Dearborn avenue property, and the Lincoln avenue property were Page's individual property. These two pieces of property or the proceeds thereof must therefore be applied in satisfaction of his individual liabilities before creditors of the firm of Page & Sprague can claim any part. Even if the equity in the Lincoln avenue property, after payment of the paramount $9,000 mortgage, and the $4,500 mortgage of Mrs. Page is to be applied in satisfaction of the debts of Mr. Page, the partnership judgments must remain unsatisfied until there is paid to White his debt, and until Mrs. Page has been repaid for

the money she advanced from her separate property to her husband.

This proposition of law that individual assets must be applied on individual debts before firm creditors can reach any part thereof, is so well settled as hardly to require a citation to support it. But we will respectfully call the attention of the court to the case of *Murrill* v. *Neill*, 8 How., 414. Mr. Justice DANIEL, in discussing this doctrine, says on page 425:

> The rule in equity governing the administration of insolvent partnerships is one of familiar acceptation and practice; it is one which will be found to have been in practice in the country from the beginning of our judicial history, and to have been generally if not universally received. This rule, with one or two eccentric variations in the English practice which may be noted hereafter, is believed to be identical with that prevailing in England, and is this: That partnership creditors shall in the first instance be satisfied from the partnership estate; and separate or private creditors of the individual partners from the separate or private estates of the partners with whom they made private and individual contracts; and that the private and individual property of the partners shall not be applied in extinguishment of partnership debts, until the separate and individual creditors of the respective partners shall be paid. The reason and foundation of this rule, or its equality and fairness, the court is not called on to justify. Were these less obvious than they are, it were enough to show the early adoption and general prevalence of this rule, to stay the hand of innovation at this day; at least, under any motive less strong than the most urgent propriety.

By the decree entered in this case the rights of the different parties to the property have been adjudicated. The decree orders a sale of the Lincoln avenue property, subject to the two mortgages, and that the proceeds be divided, first, between the individual creditors, White and

Mrs. Page, and, secondly, between the partnership creditors. The decree adjudicates the rights of White and gives him certain relief, and he is not here appealing this case. Mrs. Page, the principal defendant, has rights given her under that decree of sale, although not all she thought herself entitled to, and she asks that the decree be affirmed and enforced. The only party here complaining is the cross-complainant, Moore, and we think we have shown that he has not supported the allegations of his cross-bill, even admitting as evidence everything sought to be introduced as such, that there is no equity in his case, and that the decree was at least as favorable a one for him as he was entitled to. We, therefore, ask that the decree be affirmed.

Respectfully submitted.

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